after the bankruptcy. *Ex parte Myers*, 2 Dea. & C. 251, is an example of the last class.

The distinction between contingent debts and contingent liabilities is also clearly admitted in the cases of *Hawkin* v. *Bennett*, 8 Exch. 107, and *Warburg* v. *Tucker*, E. B. & E. 914.

In the present case, at the time of the defendant's insolvency, it was uncertain whether there ever would be any liability on the policy. It was a liability which could not become a debt unless a loss happened: it was therefore not a debt payable upon a contingency, but a mere contingent liability which was not capable of being proved. It is the *debts* due by the insolvent that are entitled to rank upon his estate; and it is only the debts and liabilities "existing against him, and *provable* against his estate," that he is discharged from under the 98th section of the Act. It follows, therefore, that if this was not a debt, provable against his estate, he still remains liable. How could the contingent liability of the defendant in this case upon the policy, be provable before the assignee? For what amount could the plaintiff have claimed to rank upon the defendant's estate? And what amount of dividend could have been reserved under the 57th section until the contingency of the loss of the vessel should happen, or how could the assignee make an award upon the value of such a claim? Such a contingency is not susceptible of valuation; and therefore such a claim is not provable. It is a mere contingent liability which may never become a debt, and not a debt dependent on a contingency, and therefore the 57th section of the Act does not apply to it.

For these reasons, we think the defendant's certificate of discharge is no answer to this action, and that the plaintiff is entitled to judgment.

Judgment for plaintiff.

FAIRWEATHER, ASSIGNEE OF HANEY, AN INSOLVENT UNDER INSOLVENT ACT OF 1869 v. NEVERS.

Insolvent Act of 1869—*Replevin—Where Writ directed to Sheriff who was an Inspector of Insolvent's estate—Whether will be set aside—Interest.*

Plaintiff as Assignee of the estate of H. an insolvent, brought replevin, the writ being directed to and served by the Sheriff, who was also an inspector of the estate;

Held, That the Sheriff, as inspector, was interested in the suit, and the writ of replevin was set aside.

[PUGSLEY'S REP. II. 524—Feb. 1875.]

This was an application made on behalf of the defendant to set aside a writ of replevin issued in this cause, referred to the Court by ALLEN, J. The ground of the application was that the Sheriff of Sunbury County, to whom the writ was directed, and who had served it on the defendant, was one of the inspectors of the insolvent's estate, and therefore an interested party in the cause.

C. H. B. Fisher, in support of the motion, contended that, as the inspector controlled the assignee, he was virtually the plaintiff. He could scarcely avoid being prejudiced, and it would be very dangerous if he should have the power of summoning the jury in case a writ *de proprietate probanda* should issue, and presiding upon the trial.

Harrison, contra. The inspector is not personally interested. Here it is not shewn that he was a creditor. [RITCHIE, C.J. The creditors having power to appoint one of their number an inspector, is not the burthen on you to show he is not a creditor? WELDON, J. The defendant could not show the sheriff was a creditor. WETMORE, J. Ought not the presumption to be that the sheriff, being a public officer, acts properly? and is not the burthen on the other side to show the disqualification?] We might send the writ *de prop. prob.* to the coroner. [RITCHIE, C.J. How could that be done? How could the coroner hand over the goods to the successful party, as the sheriff would have them? Can you show any authority for that?] No. But the application is made too soon, as no writ *de prop. prob.* is yet issued. [ALLEN, J. Unless you can show the writ went properly to the sheriff, you cannot make anything of your position.] Suppose the sheriff were interested, would that prevent his serving a writ? [RITCHIE, C.J. That is not the question, but I take it, if the sheriff issued a writ at his own instance and served it, it would be bad.] It is submitted, however, that the inspector had no interest: his office is simply one of skill. *Crane* v. *Adams*, 4 All. 59, was cited.

Rainsford, in reply.

Cur. adv. vult.

The judgment of the Court was now delivered by

RITCHIE, C.J. The 34th section of the Insolvent Act of 1869 defines the powers and duties of inspectors as follows: "They shall superintend and direct the assignee in the performance of all his duties under this Act." The 72nd section provides further that it shall be their duty, and that of the assignee under their direction, to examine all claims filed before them, &c. From these sections it appears that the inspector really stands in very much the