

the years 1867-8-9: that during those years she was twice dangerously ill—once from inflammation of the lungs, and the other time from pleurisy: that during those periods, her husband manifested the greatest concern for her, and paid her the greatest attention, and procured for her everything she required. He adds that he has had many opportunities of judging, and that he has never seen any trace of mental disease in Leigh; that he does not believe there is any; that he is, in fact, a quiet man, and by no means excitable or violent in any way. Then there is the affidavit of a Mrs. Charlotte McCalman, who lived in Leigh's family for upwards of six months in 1868, and during the period that Margaret McKay was there. She describes the conduct of Leigh towards his wife, and also towards his children, as most kind and affectionate; she describes him as a kind husband and father; that he never ill-treated his wife, but was always kind and attentive to her; that he was fond of his children, and they of him. Andrew Home and Charles Morgan describe Leigh as a quiet, sober, industrious man, who holds a very respectable position as a farmer in the township; and say that they have never known or heard of his being insane, or in any way violent or peculiar in temper. Then there is the affidavit of Mr. Simpson, who has known Leigh's family for forty years, and is the father-in-law of his brother Leonard. He says that Henry Leigh, the petitioner's husband, is a kind-hearted man; that he has always been sober and well conducted, and that he does not believe any of the statements to the contrary made by his wife in her affidavit filed in this matter; that in his belief, the wife has no just cause whatever for leaving her husband, and that he believes the trouble between them to be of her own making, under the instigation of her mother; and as to the imputation of insanity in the family and in Henry Leigh, he says he has never known or heard of anything of the kind, and in effect he says the only foundation for the charge is that Leonard Leigh was out of his mind with grief for the loss of his wife for one or two months after her death, but that he got over it, and has ever since been perfectly sane.

Upon the whole, the only conclusion at which I can arrive upon this evidence is, that the petitioner has failed in satisfying my mind that she has had any excuse for leaving her husband's home and deserting her duties as a wife in the manner she appears to have done. Her allegations, and those of her mother, and of Margaret McKay, are contradicted by Leigh himself, as plainly as they can be, having regard to the generality of the charges; and the uncontradicted account which Leigh has given of the manner in which his wife left him and got possession of all his children, so diametrically opposed to the account of the same transaction given by the wife, coupled with the confirmation which I think Leigh receives from the affidavits of the other persons filed by him, forces upon me of the conviction that reliance cannot be placed on the statements contained in the petition filed; and that I cannot do otherwise than discharge the application, without incurring the danger of giving rise to a belief in ignorant minds that the duties of the married state are less obligatory upon the wife than upon the husband.

I have not thought it necessary to refer to the mutual charges of unfitness of either alone to have charge of the children, because of the opinion which I have formed that the petitioner has not established such a case as in my judgment warrants my interfering with the paternal right. But in view of the character for sound judgment and amiability of disposition given by his neighbours to Mr. Leigh, and to the character of Christian meekness and gentleness given to Mrs. Leigh by the Rev. Mr. Ferguson and others, I venture to express the hope that both husband and wife will yield to their better feelings, and agree to forget their differences, from whatever cause they may arise, and live together in love and affection; and that Mrs. Leigh will not permit any one to lead her away from the discharge of the duties imposed upon her by her marriage contract; and that she will resume, as desired by her husband, her proper place at the head of his household. If, unfortunately, different counsels should prevail, and if the wife should at any future time be advised to renew this application, I should certainly, if the application should be made to me, require the parties and witnesses to be examined *videlicet* before me, for the purpose of arriving, if possible, at the truth as to the grounds of an alienation which, upon the material at present before me, I am obliged to say appears to me to be causeless.

In the hope of avoiding adding bitterness to the feelings of either of the parties, and of aiding in the promotion of a good understanding between them, I shall discharge the present summons without costs.

*Summons discharged.*

## NOVA SCOTIA.

### IN THE SUPREME COURT.

#### IN RE E. D. TUCKER, AN INSOLVENT.

*Insolvency Act of 1869, ss. 86, 55, 83, 97 & 101—Discharge—Confirmation—Dividends.*

It is optional with an insolvent whether he will proceed under sec. 97, or under sec. 101 of the Act of 1869; and when there is reason to anticipate that the discharge will be opposed, the latter course is more expeditious.

Where a deed of composition and discharge has been duly executed and filed with the assignee, *et* *assensu* of the filing and of the insolvent's intention to apply for a confirmation of his discharge may be given at once under sec. 101, although the month allowed by sec. 96 (Form I.) for creditors to file their claims has not expired. The assignee may declare a dividend at any time within one month after his appointment, and thereafter at intervals of not more than three months.

(Sup. Ct. N.S.—June 2, 1871.—*Sir W. Young, C. J.*)

Sir WILLIAM YOUNG, C. J., now (June 2, 1871.) delivered judgment as follows:

This is an appeal to me under the Dominion Insolvent Act of 1869, section 83, from an order of the Judge of Probate and Insolvency at Halifax, made on the 18th March last. It was a final order or judgment refusing a discharge to the insolvent under a deed of composition, on preliminary or technical objections arising out of the Act, and without any examination of the insolvent or enquiry into the validity of the deed. I had supposed when I granted a rule *nisi* on the appeal, that these were the only objections, but it appeared on the hearing before me on the 28th ultimo, that other objections alleged to be of a more serious kind were be-