interfere with the vested rights, does not apply. The plaintiff can under the last Act, go to trial before the County Court Judge without any order and he may amend his issue in accordance therewith.

I doubt if I have any right to give costs to the plaintiff.

Summons discharged, the defendant consenting to let the order go with ten shillings costs to plaintiff.

INSOLVENCY CASES.

(In the Co. Court of Prince Edward & Court of Chancery.)

In the Matter of John Thomas, an Insolvent.

Upon an application for discharge of Insolvent under sub-sec. 10 of sec. 9 of Act of 1864, a creditor objected that it did not appear that Insolvent had any estate, and therefore, did not come within provisions of the Act, and also, that Assignee had not given the notice mentioned in sec. 10, sub-sec. 1 of same Act.

Held, on appeal to Court of Chancery, reversing decision of the Judge of the County Court, that the discharge of insolvent should not have been refused on above grounds.

[Chancery, June 8th, Sept. 9th, 16th, 1868.]

This insolvent made a voluntary assignment in March, 1867, to official assignee of County of Prince Edward a few days after all his property had been sold by the Sheriff. At the expiration of two months the assignee applied to the insolvent for funds to pay for advertising meeting of creditors for examination of the insolvent under sec. 10, sub-sec. 1 of Act of 1864. The insolvent replied that he had no money to give for the purpose, and the meeting was not called.

At the expiration of a year from date of assignment, insolvent not having obtained from the required proportion of the creditors a consent to his discharge, or the execution of a deed of composition and discharge, applied to the Judge of the County Court of Prince Edward for a discharge, having given notice of such application by advertisement as required by sub-sec. 10 of sec. 9 of Act of 1864.

Allison, for the only opposing creditors, objected, 1st, that it did not appear that the insolvent had any estate to assign, and therefore did not come within the provisions of the Act; 2nd, that the notice required by sec. 10, sub-sec. 1, had not been given by the assignee.

Ollard for insolvent, contended that the act applied to all persons unable to meet their engagement as mentioned in sec. 2 of the act, and it was not necessary that insolvent should be possessed of any estate at the time of assignment, otherwise a person in insolvent's position with several writs of executions hanging over him, could never obtain the benefit of the act. As to the second objection, that it was a question between creditors and asignee: that creditors who had notice of his assignment could at any time before discharge, and upon application for discharge, of which they also had notice, examine insolvent if they desired to do so: that insolvent could not be prejudiced by the omission or neglect of the assignee who might possibly be one of the principal creditors, and so, naturally opposed to insolvent's being discharged.

The learned judge of the County Court held that both objections were good, and refused the discharge. Upon this the insolvent applied for leave to appeal, which was granted by Mr. Justice Adam Wilson. The case was subsequently heard in the Court of Chancery, by way of petition.

J. C. Hamilton, for the appellant, argued that the only grounds which any creditor could take on the application for discharge under section nine, sub-section ten, were those set forth in preceding sub-section six, which does not include the grounds acted on by the learned Judge. As to the second reason of the Judge, he argued that could not be valid under our law, which expressly applies in Ontario to all persons, whether traders or not, and that, consequently the decisions under the English bankruptcy law, prior to 1862, could not apply. It is stated that this was expressly so held by the late Judge of the County of York (The Hon. S. B. Harrison), in the case of Robert H. Brett, an Insolvent.

The following authorities were also cited: *Re Holt and Gray*, 13 Grant, 568; *Ex parte Glass* and *Elliott*; *Re Boswell*, 6 L. T. Rep. N. S. 407; *Re Parr*, 17 U. C. C. P. 621; *Ex parte Mitchell*, 1 DeGex Bankruptcy Cases, 257; *Re Williams*, 9 L. T. N. S. 358.

VanKoughnet, C.—I think the County Court Judge wrong in the reasons assigned by his order refusing the certificate of discharge. The assignee's neglect of duty is no reason for depriving the debtor of his discharge. Any of the creditors could have applied to the Assignee, or to the Judge, to compel the Assignee to call a meeting for the examination of the Insolvent; and, I apprehend, this can yet be done, if the Assignee or Judge thinks it proper.

This want of assets does not appear to me to be, in itself, a sufficient reason for refusing the discharge.

Order of Judge reversed, and matter remitted to him to deal with in accordance herewith.*

Hillborn v. Mills et al.

(In the County Court of the County of Elgin—Before His Honor Judge Hughes.)

Insolvency—Practice—Service of Papers—Irregularity, who may object to—Setting aside proceedings—Affirmation by Quaker—Taken before plaintiff's Attorney—Plaintiff, a surety and joint maker, taking up a note before due, so as to take proceedings in insolvency against joint maker.

[St. Thomas, 6th October, 1868.]

The plaintiff was surety for the defendants upon a promissory note given to McPherson & Co., for $195, which was not yet payable. The defendants owed the plaintiff a debt of $50, and in order to make up a sufficient sum whereon to found an attachment against the defendants, who had absconded, the plaintiff paid the note to McPherson & Co., and then made affirmation to his debt amounting in the aggregate to a sufficient sum within the meaning of the 7th sub-section of the 3rd section. The plaintiff was a Quaker, and his affirmation commenced as follows:—"I, William Dillon Hillborn, of the township of Yarmouth, &c., do solemnly, sincerely and truly declare and affirm that I am one of the society called Quakers. I am the plaintiff in this cause. The defendants are indebted to me in a sum of $385, currency, which sum is made up as follows," &c. Then followed the detail, and the particular note of McPherson & Co. is thus de-

* The case on appeal is reported in 15 U. C. Chan. Rep. 196.—Eds. L. J.