

something from the Defendant is, I think, clear. The Defendant in this case put him in motion under the Writ of Attachment. Bump on Bankruptcy, page 674, lays it down on the authorities. In *Re-Hughes* 1, B. R. 296, S. C. 2, Ben. 85 S. C. 1 L. T. 45. "That the funds necessary for the performance of a duty are to be advanced by the party for whom the services are to be performed." In this case, in the first instance, the services were to be performed for the Defendant Yorke, the Attaching Creditor, and his subsequent promise to pay the bill will, I think, bind him, especially after recognizing the Plaintiff's claim, by appearing before me and contesting the taxation, and afterwards promising to pay the amount of the bill in a fortnight. Section 28, Sub-Section B, makes the Official Assignee an officer of the Court having Jurisdiction in the County or District for which he is appointed. He is accountable for money, &c., in the same manner as Sheriff and other officers are. I cannot bring my mind to the view that the act burdens him with all the responsibilities of a Sheriff, and excludes him from the right of looking for payment for fees of travel and service, &c., to the person who employed him. Under the Insolvent Act of 1869, the Judges of the Supreme Court of Nova Scotia, by order of the 13th of September, 1869, *vide* Clarke's Insolvent Act of 1875, page 422, ordered as follows:—"It is ordered by virtue of the 32 and 33 Vict. Chap. 16, intitled: 'An Act respecting Insolvency Sect. 139,' that until further direction therein the same costs, fees, and charges shall or may be taken or paid by and to the Judges of Probate, Counsel, Attorney, Solicitors, and Sheriff as are now payable to and taken by them in the Supreme Court or Court of Probate, in this Province, under and by virtue of the Act in that behalf."

630 By Section 123, of the Insolvent Act of 1875, it was provided, among other things, that the Judges of the Supreme Court of Nova Scotia, being the Court of Appeal under said Act, shall make, frame, and settle the forms, rules, and regulations to be followed and observed in proceedings in Insolvency under this Act; and fix and settle the costs, fees, and charges which shall or may be had taken or paid, in all such cases, by or to Attorneys, &c., and by or to Sheriffs, Assignees, &c. No application was ever made, so far as I am aware, by the Judges of the County Court to the Judges of the Supreme Court, to have the provisions of this section so far as the Province of Nova Scotia is concerned, carried into effect, and in default, Section 124 provided that until such rules of practice and tariff of fees have been made, as required by Sections 122 and 125, such rules of practice and tariff of fees of Insolvency, now in force in the said Province respectively, shall continue and remain in full force and effect." The practice in the Court of Probate always was and is to prepay fees for services to be performed. I now ask myself would the Judges of the

640 Supreme Court, or the Judges of the Court of Probates, "under and by virtue of the acts in that behalf," to use the language of the order of the Supreme Court of 1869, in case similar to the present, have taxed or allowed anything to the Sheriff or the Assignee as against the party who put either of them in motion and promised to pay them. I think they would have allowed the fees for travel and service, &c. It is possible that in allowing Plaintiff remuneration beyond and exclusive of the actual expense of going to seize property and service of writ, I may have erred, although I do not think it excessive as it was fully discussed by Plaintiff and Defendant at time of taxation, but as the objection was not raised at this time, and I have so taxed the bill, and no appeal was ever taken by Defendant, as provided by the Insolvent Act, I feel myself now restrained from going outside or beyond the bill, for to do so would be to assume the right of revision. In my Judgment the bill is conclusive between the parties, and therefore binding on me, and I give Judgment to Plaintiff for \$70.40, the amount of the taxed bill.

RULE FOR APPEAL.—M.

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CUMBERLAND, S. S. }
In the County Court, 1880. }

(WILLIAM C. GREENFIELD, PLAINTIFF,
VS.
(FREDERICK YORKE, DEFENDANT.

The Defendant in this cause having filed Bonds to my satisfaction to respond the final Judgment to be given in this cause, I do order that Defendant have leave to appeal from my decision herein in favor of the Plaintiff to the Supreme Court of Nova Scotia, on the grounds following, viz:

1. That said decision is against law and evidence.
2. That evidence was improperly received and improperly rejected on the trial of the cause.
- 660 3. That the finding of the learned Judge that Plaintiff was not Assignee of Estate of Stewart and Slayter is contrary to the law and the evidence.
4. That Plaintiff being Assignee of the Estate of Stewart and Slayter, the Judge had no jurisdiction to tax or fix his fees or remuneration.
5. That it being proved that there was assets of the Estate of Stewart and Slayter more than sufficient to pay Plaintiff's bill, he was bound to resort to it for payment.
6. That Plaintiff cannot recover against Defendant as the moving creditor for his fees and remuneration in proceeding as Official Assignee to attach the Estate of Insolvents.
7. That the fees and remuneration of Plaintiff were under any circumstances fixed or taxed by the Judge without authority. If Plaintiff was Assignee of Estate he had no jurisdiction to interfere at all, if he was not Assignee,
- 670 then the Assignee appointed by creditors should have been notified, which was not done.
8. That no appeal from the taxation of said costs could have been made by Defendant, as he was not a party to any contestation and could not have been made by the Assignee or any person authorized to act on behalf of the Estate, as no notice was given, and there was no opportunity of doing so.