by the decision in *Wallis* v. *Harper*, 7 U. C. L. J. 72.

I am not quite clear that the examination of September last, while the prisoner was on the limits on mesne process, though *after* judgment, can now be considered; for, perhaps, I cannot order him *to be committed* to gaol, as he is now *in* gaol, nor can I order a *ca. sa.* to issue against him, as he is in on a *ca. sa.* at present, and it may be that the taking him on a *ca. sa.* after *that* examination and examining him twice while a prisoner upon the *ca. sa.*, since the former examination, prevents the plaintiff from falling back upon the previous examination for the purpose of showing it to have disclosed a parting with his property to defeat or defraud his creditors or any of them, and from claiming the right to have him committed to custody under the 41st sec. I do not see why the plaintiff might not examine the defendant after his discharge, if his answers still showed an improper parting with his property, and apply then to have the defendant committed to gaol, by way of punishment, under that section.

And this view naturally suggests—why do this again when it has been done already, and when it now appears that this improper conduct has been committed, and why not commit upon the present disclosed misconduct of the defendant?

The defendant may be committed by way of punishment, though he is now in custody under a *ca. sa.*, for he would be discharged from further custody on the *ca. sa.* and be detained or committed under the order.

When the debtor is punished under ch. 26 sec. 11, he is *re-committed* under the *ca. sa.* and Judge's order, limiting the time—probably the detainer or cause of detention that would be returned, on a *habeas corpus* would be the *ca. sa.* alone;—the Judge's order merely limiting the time of imprisonment to be suffered under the *ca. sa.*

The fact of his being now in custody, or already committed, may be no reason why he should not be committed under the order on his being discharged from the *ca. sa.*

Then the question is, can the former examination be referred to and acted upon, and imprisonment be awarded on it, after the later proceedings before mentioned have been taken; do the later proceedings supersede the effect of that examination and the examination itself; if not, why may it not be still looked to and acted upon?

My general conclusion is it may be; but before deciding, it being a new case, it may be better to consult with one of my brother Judges on the subject.

13th April.—Having seen Mr. Justice Hagarty, he is of opinion that the prior examination should not now be looked to, but that the plaintiff should be left to renew his examination of the defendant if he please. This, I must say, is not my own opinion; but in a case of imprisonment or liberty I would rather acquiesce in the discharge being granted than detain the defendant on a doubtful matter, with the opinion of one of my brother Judges in favour of the discharge.

*Prisoner discharged.**

* *See* report of former application in 4 Prac. Rep. 158. [Eds. L. J.]

ENGLISH REPORTS.

COMMON PLEAS.

Bramble v. Moss.

Where issue is taken on a plea which sets up a composition deed under the Bankruptcy Act, 1861, proof must be given to support the plea that the requisite proportion of the creditors have assented to the deed.

The certificate of registration and the debtor's affidavit in pursuance of paragraph 5 of section 192 do not constitute such proof.

[16 W. R. 649—April, 1868.]

The declaration was on the money counts. The defendant pleaded a composition deed, the plea averring (*inter alia*) that a majority in number, representing three-fourths in value of the creditors of the defendant, whose debts respectively amounted to ten pounds and upwards, did, in writing, assent to and approve of the said deed. It also averred that all conditions precedent had been performed, and all times elapsed necessary to make the deed a bar to the action.

At the trial before Smith, J., at Guildhall, on the 19th February last, the defendant put in the deed and proved its execution by the attesting witness. He also put in the certificate of registration under the hand of the chief registrar, and the seal of the court, and an office copy, duly sealed, of the affidavit required by the 5th clause of the 192nd section of the Bankruptcy Act, 1861. No other evidence was given that the requisite number or proportion of creditors had assented to the deed.

It was objected by the plaintiff's counsel that such evidence was necessary, and the learned judge being of that opinion the plaintiff had a verdict, leave being reserved to move to set it aside and enter it for the defendant if the Court thought that the evidence produced was sufficient to prove the plea.

Besley now moved accordingly.—The certificate of registration is conclusive; it is the act of the Bankruptcy Court, and this Court cannot inquire whether it was properly given. *Kelley* v. *Morray*, 35 L. J. C. P. 285, 14 W. R. 939, shows that the certificate of the appointment of an assignee is conclusive. [Smith, J.—There the certificate states the appointment of the assignee; here it does not state that a majority have assented.] No; but the affidavit does, and that is under the seal of the court, [Bovill, C. J.—The affidavit is only that of the debtor. The certificate shows that the affidavit has been filed; not that its contents are true.] He referred to the 206th section. [Bovill, C. J.—Does that section do more than make a copy evidence?] Secondly, the objection is not open to the plaintiff, as the replication merely takes issue on the plea, which avers performance of all conditions precedent necessary to make the deed binding; and under the 57th section of the Common Law Procedure Act, 1852, the plaintiff ought to have specified the conditions precedent whose performance he intended to contest.

Bovill, C. J.—The evidence is insufficient to support the plea, the whole of which is put in issue by the replication. Section 206 makes duly authenticated copies of proceedings admissible in evidence, but its only object is to save the production of the original documents. The copy