

as follows:—"The Court, &c., considering that the said action of the plaintiff hath been instituted and prosecuted under the provisions of the Lessors' and Lessees' Act, but does not rest upon any lease or agreement, conventional or legal, between the plaintiff and the defendant; considering that the said plaintiff cannot, for the causes aforesaid, maintain her said action; and that, therefore, in the judgment rendered by the Circuit Court, on the 28th of March, 1866, there is error, doth reverse and set aside the said judgment, and proceeding to render such judgment as should have been rendered by the Circuit Court, doth dismiss the action, and doth condemn each party to pay his own costs, as well in the said Circuit Court as of this Court.

Judgment revised, SMITH, J., dissenting.

Clarke, for the plaintiff.

Day & Day, for the defendant.

SUPERIOR COURT.

MONTREAL, Oct. 27.

IN RE THURBER.

Insolvent—Opposition to Discharge.

An insolvent, within a few months previous to the time he stopped payment, made large purchases from several parties, and at the same time was borrowing at from a half to one per cent. per week. He had made no balance sheet for two years previous to his suspension.

Held, that the Court could not refuse to confirm his discharge on these grounds, in the absence of proof that he made the purchases knowing that he was insolvent, and in contemplation of insolvency.

The insolvent, Alexander Thurber, having obtained the assent of the required majority of his creditors to a deed of composition and discharge, under the Insolvent Act of 1864, petitioned the Court in the usual form for confirmation of his discharge. This petition was contested by a number of creditors who had refused to become parties to the deed of composition.

The following were the principal grounds assigned by the contesting creditors:—That the insolvent was a bankrupt to his own knowledge in 1863; and was so continuously up to the time he declared himself to be so, on the 19th of May, 1866. That not only was he insolvent to his own knowledge, and actually a bankrupt during all the period above

mentioned, but his affairs became gradually worse from the date of his balance sheet in 1863, to the time of his actual stoppage on the 19th of May last; so much so, that, in addition to his ordinary discounts at the banks, he was obliged to borrow money during the whole of the above mentioned period at from 14 to 15 per cent. discount; and from July, 1864, to the time of his stoppage, at the rate of a half to one per cent. per week. That the insolvent purposely concealed the actual state of his affairs from his creditors, and even purposely abstained from making a balance sheet at any time since 1863. That all the purchases which the insolvent made from his creditors were so made during the six or seven months immediately preceding the 19th of May last, and some of them within a few weeks of that date. That when the insolvent purchased from the contesting creditors the goods for the price of which they are creditors in this matter, he knew himself to be unable to meet his engagements, and concealed the fact from his creditors with the intent to defraud them. That the insolvent, on or about the 18th of May last, fraudulently disposed of a large quantity of teas, forming part of his estate, to A. W. Hood, for the most part at cost price, and fraudulently employed the proceeds, so that no part of such proceeds have in any way formed part of the assets for distribution in this matter. That on or about the 18th of May last, the insolvent fraudulently preferred Messrs. Prentice, Moat & Co. and P. D. Browne, who were then creditors of the insolvent. That the insolvent, by certain entries made in his books within a few weeks of his insolvency, fraudulently represented his own wife to be a creditor of his estate for the sum of \$3000, whereas it is established in his examination under oath that she never was a creditor of the insolvent in any sum of money whatever. That in February last, the insolvent fraudulently procured the destruction of a promissory note, signed by Thomas Davidson, in favour of, and endorsed by the insolvent to Henry Thomas, in order to induce Davidson not to oppose the deed of composition and discharge filed in this matter, and that the effect was to make Davidson withdraw all opposition to the confirmation of the deed.