

Co. Ct.]

W. E. ROCHE, INSOLVENT.

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school-teacher, and alleged that moneys received by him in that capacity had been either sent by letter or were handed to his father. None of the letters were produced, nor were there any letters proven setting forth acknowledgments of the receipt of such by the insolvent. The insolvent kept books shewing receipts of moneys from various persons in the course of his business as a merchant and miller, but none as received from the claimant. It was alleged that \$300 at one time was paid in one sum to the insolvent by the claimant, when claimant asked for a note, but which the insolvent refused to give, stating that if the claimant could not trust his own father he might lend his money to some one else. The only evidence in support of the claim was that of the claimant and of his father and mother, who all swore to the loan of the moneys, and the same were advanced in different sums at various times, and that the insolvent was to pay the claimant ten per cent. interest for the use of the moneys. The other facts of the case appear in the judgment. The claim was contested by a creditor on behalf of the estate.

HUGHES, Co. J.—After the best consideration I can give to this case, I am unable to say that I am quite satisfied of the *bona fides* of this claim for the following amongst other reasons, viz.:

1. I have carefully looked over the books of the insolvent, and find various entries in them of cash received during the course of his business as a merchant and a miller, and I can find none which corroborate the evidence given in support of this claim; so that without an entry of a dollar, crediting his son with money alleged to have been loaned to him, the insolvent comes here to support the claimant's allegation, although there are various entries of cash received from many other persons, which appear to be duly credited, but none received from him.

2. The claim is sought to be substantiated by bringing before me some loose leaves detached from an old diary of the insolvent and an old pass-book, which it is alleged were found tossing about the house of the insolvent by his younger son just before the evidence was taken by me in this matter, and I may say, with reference to them, that they bear a very dubious and unsatisfactory appearance, as presenting evidence of the *bona fides* of the claim set up by this young man against the estate of his father.

3. The son was and is still a minor, and it does not seem to me probable, that if he lent his father money, and the father had refused to give him a note or memorandum acknowledging his indebtedness, and agreeing to pay ten per cent. interest for its use,

that he would have taken an old diary of his father's—as he said he did, and contented himself with the entries which now appear; and afterwards have left the book (such as it is) to be tossed about his father's house; in other words, it is too much to expect me to believe it, and I must simply say I do not believe that any one, with the sense and intelligence this young man appears to possess, and the shrewdness and care most young lads exercise about their first personal earnings, would leave the evidence of such a disposal of money as alleged here, to go out of his hands, into the custody or within the reach of his debtor, even although his own father were (as it is alleged here was the case) that debtor, and more especially as he had had the shrewdness to ask for a promissory note and acknowledgment of the debt and been refused it.

4. I think the evidence brought in corroboration is not of that satisfactory and conclusive kind that I can entirely depend on it; more than this, it is a matter for grave suspicion, that not one of the letters sent as alleged, enclosing moneys, from the claimant to his father, or the father's alleged acknowledging receipt of such, was produced.

5. It is quite as extraordinary, if the insolvent paid his son, as it is alleged he did, early in 1879, \$33, and in the end of that year \$30 more, when the claimant went to Kingston to matriculate, that no entry should appear to show it in the insolvent's books. And it is quite as extraordinary that, in none of the leaves of the old diary produced, or in the pass book, do there appear to be credits given for the sums so received from the father, and the old diary, it is alleged, contains the foundation entries for those which appear in the other scrap of a book which I have called a pass book, and which presents quite as doubtful an appearance as the diary.

6. Again, I find entries in that old Diary under date of "Monday, April 7, 1876," "Lent," the letters "W. E. R." written over some other word or initials, which it is alleged were the letters "Pa." (for papa)—"\$24.00"—"Paid Mrs. McPherson for board up to date, \$6.00." "Received from the Trustee, \$30, in part payment of my Salary S. S. No. 19, Gainsborough;" and on the next page are written in pencil, under the date of March 10, the words, "Recd. from," and all the rest of the entries for two pages, which had been made in pencil, are rubbed out, apparently with India rubber. I must say I cannot rely upon such a book, or upon such evidence, in a contestation between a minor son, and this contestant, acting on behalf of his father's creditors. Were the case one set up by this same son against the executors or adminis-