

Chan. Div.]

ONTARIO REPORTS—RECENT ENGLISH PRACTICE CASES.

entered or not, and whether the judgment may be properly signed as on default. (See *Dougall v. Wilburn*, 1 Chy. Ch. R. 155.)

LEE V. CREDIT VALLEY RAILWAY CO.

Creditors suit—Injunction restraining action by creditor dissolved.

In a creditor's suit against a Railway Company a Receiver had been appointed and a reference as to creditor's claim directed, and an action brought by a creditor against the company for unliquidated damages had been restrained by injunction, and leave given to the plaintiff in the action to prove his claim in the Master's office; but, before doing so, the Receiver passed his accounts and was discharged by consent of the parties to the suit. On a subsequent application by the creditor who had been so restrained, the injunction was dissolved, but without costs.

[February 14, 15.—Boyd, C.]

This was an action brought by creditors, on behalf of themselves and all other creditors, against the defendant Railway Company, and on the 19th May, 1880, decree had been made by consent appointing a Receiver of the railway, and referring the cause to the Master to take accounts of creditors' claims.

On the 8th February, 1881, on the application of the plaintiffs, an order had been made by BLAKE, V.C., restraining the plaintiff in an action of *Wrigley v. The Credit Valley Railway Co.* then pending in the Queen's Bench for the recovery of damages for wrongful dismissal from the Company's employment, from further prosecuting that action, and giving him leave to prove his claim in this suit before the Master.

On the 4th March, 1881, a statute was passed by the Ontario Legislature (44 Vict., c. 61,) enabling the company to consolidate its bond debt by the issue of new preferential bonds, and making provisions for the payment of 50c. in the dollar on the claims of all creditors other than bondholders, who should accept the benefit of the Act.

In pursuance of the arrangements authorized by the Act, the claim of the plaintiffs, Lee & Co. against the Company, was satisfied, and by consent of the parties to this suit an order was made on the 5th June, 1881, discharging the Receiver.

Wrigley had refused to proceed to prove his claim before the Master.

Meek, for Wrigley, now moved to dissolve the injunction, and for leave to proceed with the action. The passing of the Act, 44 Vict., c. 61, and the discharge of the receiver had so altered the condition of affairs that the plaintiff ought no longer to be restrained from carrying on his action.

Blackstock, for the defendant company—The discharge of the Receiver is no ground for this application. Wrigley has still power to establish his claim, if any, before the Master, and the Company are prepared to give him every facility for so doing. The discharge of the Receiver does not preclude the plaintiff getting the benefit of the decree.

Cur. adv. vult.

THE CHANCELLOR—The order of BLAKE, V.C., was evidently made upon the footing that as all creditors were to come in and prove before the Master, it was more convenient to have Wrigley's claim disposed of by him; but on the passing of the Receiver's accounts and his discharge on the 5th June, the condition of affairs has been so changed as no longer to justify the continuance of this injunction. As the case was before, the plaintiff could not get execution against the Receiver, but now the company is in possession of its own affairs and assets, and no reason exists for compelling Wrigley to come into the Master's office.

Order granted discharging injunction without costs.

RECENT ENGLISH PRACTICE CASES.

(Collected and prepared by A. H. F. LEFROY, ESQ.)

MARSDEN V. LANCASHIRE AND YORKSHIRE RAILWAY CO.

Imp. J. Act 1873, s. 18, 19. Ont. J. Act, s. 37.—Jurisdiction of Divisional Court.

Where at the trial of an action the Judge gave judgment for the plaintiff without costs, and the plaintiff afterwards applied to the High Court to have this varied; *held*: the High Court had no jurisdiction to entertain an appeal from a final judgment, and the application of the plaintiffs ought to have been made to the Court of Appeal in the first instance.

[March 18, C. of A.—L. R. 7 Q. B. D. 641.]

The above head-note sufficiently explains the point in question.

LORD SELBORNE, L. C., said in the course of his judgment:—