The attorney who entered an appearance for the defendant, if he has done so without any authority, is responsible to anybody injuriously affected by it, and as there is no complaint of his insolvency, I must leave any such persons to their actions against him. His act may delay ultimate recovery, but cannot prevent it if the demand be actually due—it may frustrate a fraudulent attempt to cheat creditors.

The case of *Bayley et al.* v. *Buckland et al.*, 1 Ex. 1, is strongly in point in this case.

In that case it was decided that when a defendant has been served with process and an attorney, without authority, appears for him, the Court will not interfere to set aside the proceedings if the attorney is solvent, but will leave the defendant to his remedy by summary application against the attorney. If the attorney be insolvent, the Court will relieve the defendant on equitable terms, if he has a defence on the merits.

In a case like the present, the question of solvency is of less importance, because the entry of an appearance is more likely to save than to cause an unjust recovery against the party for whom such appearance has been entered.

Summons discharged.

McInnes v. Hardy.

Consol. Stat. U.C cap. 22, sec. 287; Consol. Stat. U.C. cap. 24, sec. 41—Examination of judgment debtor—Form of order—Mode of conducting examination—Refusal to answer, or unsatisfactory answers, how made to appear.

Semble.—The common form of order for the examination of a judgment debtor, blending the provisions of Consol. Stat. U C. cap. 22, sec. 287, and Consol. Stat. U. C. cap. 24, sec. 41, is not proper. These acts have very different objects in authorising the oral examination of a judgment debtor. The affidavit applicable to the one, by no means necessarily will be suitable to the other.

If a question or a series of questions be put, which the judgment debtor *refuses* to answer, there should be some statement to this effect in the certificate of the examiner, either general—that questions of such a purport were put, which the defendant refused to answer—or, better still, that some specific question or questions were put—setting them forth in substance—and that defendant would not answer them, or that defendant's answers to such and such questions were not *satisfactory*, or giving questions and answers, so that it might be determined whether they were satisfactory or not.

Refusing to answer, or answering questions unsatisfactorily, are matters which, if not certified by the examiner, must be made specially to appear, either in the report of the examiner, or in an affidavit setting forth questions which were put and were wholly unanswered, or that an answer given (stating it) was unsatisfactory.

Semble.—The former is the better course. The examiner should require answers to his questions, and the defendant's refusal to answer, or his unsatisfactory answer, should be entered in the report of the examination.

(Chambers, Nov. 5, 1861.)

On the 5th August last, Draper, C. J., made an order in the comman form for the examination of the defendant.

The defendant was examined; and on 14th September last, *Mr. Jackson* obtained a summons from McLean, J., calling on defendant to show cause why he should not be committed to the common gaol of the county of Brant, on the grounds: 1st, That he refused to disclose his property, and his transactions concerning the same; 2nd, that he did not make satisfactory answers respecting the same; 3rd, that he concealed or made away with his property, in order to defeat or defraud his creditors.

Mr. Jackson obtained the summons on reading the examination of defendant before the county judge of Brant, and upon reading an affidavit of Mr. Bruce, who examined defendant.

James Paterson showed cause, and filed the affidavit of defendant, and affidavits of two other persons.

Draper, C. J.—The former part of the order to examine defendant is framed under the Consolidated Statutes U. C. cap. 22, sec. 287; the latter under the Consolidated Statutes U.C. cap. 24, sec. 41. The order is in a form commonly in use.

It did not occur to me, when signing the order, that these acts have very different objects in authorizing the oral examination of a defendant, and that the affidavit applicable to the one by no means necessarily will be suitable to the other.

I think the course of blending the two acts into one has in the present case produced inconvenience, and may frequently do so. As at present advised, I shall not make a similar order.

The summons on defendant is to show cause why he should not be committed to the county gaol of the county of Brant, on the grounds: 1st, of his refusing to disclose his property, and his transactions concerning the same; 2nd, that he did not make satisfactory answers respecting the same; 3rd, that he has concealed or made away with his property, in order to defeat or defraud his creditors.

The affidavit of Mr. Bruce bears directly only on the second objection, and inferentially on the third, in this way, that because the account given as to what has become of his property is not satisfactory, and because he admits he had certain property at one time, and asserts that he has none now; therefore he has concealed or made away with it in order to defraud his creditors.

I do not think the following passage in Mr. Bruce's affidavit: "I particularly required the defendant just before the close of his "examination, to give any account of payments made or losses "suffered by him that would make up the deficiency between the "money paid and the losses sustained by him, and the amount of "his full purchases, but he could or would give no other or fuller "information than appears in his said examination" sufficient to establish a refusal to disclose his property and his transactions concerning the same.

If a question or a series of questions were put which the defendant refused to answer as the first objection suggests, there should be some statement to this effect in the certificate of the County Judge, either generally, that questions of such a purport were put which the defendant refused to answer, or better still, that some specific question or questions were put, setting them forth in substance, and that defendant would not answer them; or coming to the second objection that the defendant's answer to such and such questions were not satisfactory; or giving questions and answers so that it might be determined whether they were satisfactory or not.

Then as to the third objection, the evidence of concealment of or making away with his property must not only be given, but that such acts were done to defeat or defraud creditors—an inference however, that would in most cases follow. The fact that a man's balance sheet shews a deficit, would not *alone*, I apprehend, be sufficient for this purpose

The examination of the defendant which is returned, contains a vast number of statements made, I assume, in answer to questions, shewing sales and purchases of property, payments of various sums of money to numerous individuals, transactions of receiving and of transferring promissory notes, making promissory notes, making payments upon them—in short, four closely written pages of details, neither systematically arranged nor very clearly explained.

An expert accountant might possibly form a balance sheet out of these statements, or the materials might be found wholly insufficient. I do not pretend to undertake the task of eliciting the real facts from such confused statements. If the defendant had been distinctly required to furnish a statement in writing by a day appointed by the Judge, in which should be made to appear his actual property and receipts, his expenditure and losses, and the deficit, accompanied with explanations how the deficit arose, and had either refused or had neglected after reasonable time to do so, this might have supported one of the objections; or the statement itself when examined might have supported another. But in what is placed before me, placed as it is, I am not prepared to say the examination leads to either conclusion, and with the aid of Mr. Bruce's affidavit there is no satisfactory or certain ground on which to determine that the defendant should be committed as a fraudulent debtor.

I cannot find certainty, and I will not condemn upon suspicion.

The defendant in reply, has filed his own and two other affidavits. They assist in leading me to the conclusion that refusal to answer or answering questions unsatisfactorily, are matters which if not certified by the examiner must be made specially to appear, either in the report of the examiner or on an affidavit setting forth questions which were put and were wholly unanswered, or that an answer was given (stating it) which it is contended was unsatisfactory. I rather incline against the latter course, for it appears to me it would be better that the examiner should require his questions, and the defendant's refusal to answer, or his unsatisfactory answer, to be entered in the report of the examination. The examiner may call for such accounts and statements as I have above suggested; in short, for any account or statement which may be necessary to arrive at the truth; and the Judge or officer taking the examination might be asked to appoint a day for