

[Eng. Rep.]

PIKE V. DICKENSON.—REG. V. TAYLOR AND SMITH.

[Eng. Rep.]

the plaintiff got into difficulties and made a composition with his creditors, and accordingly on the 24th July, 1867, he executed an indenture made between himself of the first part, Thomas Viner of the second part, Robert Symons of the third part, James Boffin of the fourth part, and Nathaniel Humphreys of the fifth part, and the various creditors, whose names appear in the schedule, of the sixth part, whereby, after reciting that the plaintiff was unable to pay his creditor in full, and that he had proposed to pay to them 8s. in the pound, by four instalments of 2s., at intervals of three months each from the 10th July, 1867, and that three-fourths of all the creditors whose debts amounted to £10 and upwards had agreed to accept this composition; the deed proceeded to carry this proposal into execution, and by it the plaintiff covenanted that after registration of the deed under the 192nd section of the Bankruptcy Act of 1861, he, the plaintiff, would deliver to Nathaniel Humphreys promissory notes for the payment of the instalments, and Viner, Symons, and Boffin, severally for themselves and their respective executors and administrators, covenanted that, if not paid one month after notice of default in payment of these promissory notes, they would pay to each of the creditors of the sixth part in the schedule mentioned the amount of the other instalments due to the creditors on the sums set opposite to their names in the schedule, and thereupon by the said deed the creditors of the sixth part released the plaintiff from the debts due to them and from all actions, suits, and demands, with a proviso that if they failed the release should be null and void. This deed was duly registered in bankruptcy. While this deed was in preparation, and after the meeting of the plaintiff's creditors, the plaintiff met the defendant, who stated that he was a creditor of the plaintiff, and on being asked the amount due to him, said he could not state it exactly then, but, as far as he could make it out at that time, it amounted to £300. Thereupon the defendant's name was put down as a creditor for £300, and he received the composition accordingly, and duly executed the deed. The bill then states that according to subsequent investigation the plaintiff had discovered that in the series of the accounts rendered by the defendant and plaintiff, in respect to their transactions prior to the date of the deed, the defendant had charged the plaintiff with sums exceeding what he had paid on his account; and I regret to say that the evidence given in this cause fully establishes the truth of this charge. The evidence is given compulsorily, but John Brown, ship and insurance agent, and Thomas James Devitt, ship and insurance broker, by their evidence fully established these facts. Thus in one case, for example, where the defendant paid £13 9s. 7d. he charged the plaintiff as having paid £20 0s. 8d., and in another case, where the defendant had paid £17 10s. 11d., he charged the plaintiff with £25 1s. 9d. as paid on his account. It is not necessary to multiply instances of this, of which there are several. The result is inevitable, that when such conduct as this is proved, the account must be re-opened; and, indeed, from the first moment that this fact was established to my conviction, I only hesitated as to the mode by which

and the conditions under which, I should adopt this course. The deed of composition seemed to present a considerable difficulty, because, unquestionably, if instead of £300 being due to the defendant, a large sum of money had been due from him, the state of the plaintiff's assets would have been materially altered, and the creditors might properly have refused to take so small a composition as 8s. in the pound. Accordingly I made some suggestion to the plaintiff's counsel to meet this difficulty, but after turning the thing over in my mind I have been unable to come to any satisfactory conclusion respecting it; and upon the whole I have thought that I should be creating expense and not doing anything effectual if I meddled with it, and that I had better leave the matter to be dealt with by the scheduled creditors, parties to the deed of the 24th of July, 1867, as they might think fit, if indeed they could do so at all. But I felt it impossible to allow such accounts, affected by such evidence, to go unnoticed, when brought in due form before the attention of a court of equity. I have accordingly determined to take no notice whatever of the deed of composition of the 24th July, 1867, and I shall simply direct an account to be taken of all dealings and transactions between the plaintiff and the defendant up to the 24th July, 1867, including therein all receipts and payments subsequent to that period in respect of transactions begun previously to that period; and if, in the course of taking such account, it shall appear that any account was settled between the plaintiff and the defendant, then that leave shall be given to either party to surcharge and falsify such accounts or any items therein. I reserve further consideration, and make a special reservation of the costs of the suit up to and including the hearing. I do this because, if the account should turn out favourable to the defendant, I should not be disposed to give him costs up to and including the hearing, in a case where such facts have been proved as I have mentioned, and in consequence of which alone I pronounce the above-mentioned decree.

MIDDLESEX SESSIONS.

REG. V. TAYLOR AND SMITH.

Conspiracy—Evidence.

Prisoners were indicted for conspiring to commit larceny.

A second count charged an attempt to commit a larceny.

The evidence was that the two prisoners, with another boy, were seen by a policeman to sit together on some door-step near a crowd, and when a well-dressed person came up to see what was going on, one of the prisoners made a sign to the others, and two of them got up and followed the person into the crowd. One of them was seen to lift the tail of the coat of a man, as if to ascertain if there was anything in the pocket, but making no visible attempt to pick the pocket; and to place a hand against the dress of a woman, but no actual attempt to insert the hand into the pocket was observed. Then they returned to the door-step and resumed their seats. They repeated this two or three times. There was no proof of any preconcert, other than this proceeding.

Held, not to be sufficient evidence of a conspiracy.

Held, also, not to be evidence of an attempt to steal.

[25 L. T. N. S. 75.]

The prisoners were indicted for conspiring together to commit larceny from the person of Her Majesty's subjects.