NOVA SCOTIA REPORTS.

SUPERIOR COURT.

(*Before* DesBarres, McDonald, Smith, *and* Weatherbe, J. J.)

In Re Leake v. Laidlaw, Insolvents.

Insolvent Act—Statute of Limitations.

A claim less than six years old at the date of a writ of attachment is not barred by the Statute of Limitations because the six years expire before the declaration of a dividend.

[Halifax, Jan. 9, 1879.

In this cause, the claimant Yorke filed a claim against John Leake, one of the partners of the firm of Leake & Laidlaw, against whom a writ of attachment had been issued under the Insolvent Act of 1875. The claim was collocated on the dividend sheet of the partnership estate, and Chesley on behalf of the claimant or his assignee applied to have a separate dividend sheet of the private estate of John Leake prepared, and that this claim should be placed upon such separate dividend sheet. After this the Inspectors objected to the claim *in toto* on the ground, among others, that the debt was barred by the Statute of Limitations.

The Judge below (Judge Morse, of the County Court, District No. 5) held, although the debt was not barred by the Statute at the time of the assignment, that it became so before the declaration of the dividend, and as there were no other private claimants, he refused to order the preparation of a separate dividend sheet. From this decision, and the two orders founded upon it, an appeal was taken.

S. A. Chesley, for claimant, contended that the assignee took possession of the estate in trust for the creditors, and that the Statute of Limitations did not run against a trust; that the claim, not being barred by the Statute at the time of the assignment, must be allowed to rank on the estate, citing sec. 80 of the Insolvent Act of of 1875, and 2 Glyma and Jameson, 46, and 330.

Motton, Q.C., contra, contended that the Statute having commenced to run against the claim, was not barred by the assignment, and could not be suspended by any causes other than those set out in the Statute of Limitations itself, or express enactment in the Insolvent Act.

C. A. V.

DesBarres, J., delivered the judgment of the Court.

In the matter before us yesterday, we have all turned our attention to the question raised, and, as the counsel must have observed yesterday, there was a pretty strong opinion among us that the Judge had taken an erroneous view of the matter. It is hardly to be wondered at that he should have done so, not having had any authorities to assist him in forming his judgment. The strong impression we had yesterday has been confirmed by looking at the cases since. We think it would be monstrous if, in a case like this, a plea of the Statute of Limitations could be set up, and we are disposed to act upon our impression, and decide accordingly.

CORRESPONDENCE.

Appointment of Q. C.'s and J. P.'s.

To the Editor of Canada Law Journal.

Sir,—No lawyer acquainted with the subject of the Royal prerogative as connected with the working of our present constitution, can be surprised at the recent utterances of the Supreme Court of Canada on the attempted appointment of Queen's Counsel by the Local Governments. It is a mystery to most of the *profanum vulgus* who accept, it is to be hoped, with profound reverence the ordinary deliverances of those High Priests of Law who speak ex cathedra in our Provincial Temple, how they ever were brought to pronounce that the power rested in both Dominion and local Governments, and that an Act of the local Legislature could avail to transfer a prerogative like the appointment of Queen's Counsel from its royal source to an artificial reservoir. If the authority to make such appointments rests anywhere in Canada, it can be nowhere else than with Her Majesty's directly commissioned representative, the Governor-General. If any legislative authority in this Dominion can deal with