ment-creditor on it within the 184th section of the Bankrupt Law Consolidation Act, 12 & 13 Vic. cap. 106; and on that ground also there is no case for our interference; besides, there is an express reservation in the deed of collateral securities. As to the £2 10s. the parties, if well advised, will not give rise to any application to the Court about that, as considerable costs would be incurred both here and in the Bankruptcy Court; but if necessary the application on that may be renewed.

Willes, J.—I am of the same opinion. In *Murray* v. *Arnold*, the money was paid into court as a condition of the defendant's being allowed to issue a commission to examine witnesses abroad, and it was held that the plaintiff's right to the money was not taken away by the 184th section of the Bankruptcy Act, 1849; and that conclusion might have been arrived at on the Act itself without respect to lien. Wightman, J., there referred to *Ferrall* v. *Alexander*, 1 Dowl. P. C. 132, to show that money paid into Court to abide the event of a suit was not payment to a creditor within 6 Geo. 4, cap. 16, sec. 82; but I do not find that he expressed any opinion on the applicability of that to the Common Law Procedure Act, and I think it is not applicable to the 65th section of the Act of 1854. I should have thought "payment" there must apply to all payments, whether made under the 63rd section or under the order of a judge. Payment into court under such an order as the present is not a payment of money to be held for a creditor if he proves his claim a just one, but a payment of money to be held for the creditor till the amount of the debt is settled by taxing it, and that in effect is a payment to him, and by it the right of the creditor is determined as much as if the payment were made into his hands or into the hands of the sheriff under the execution. If it is said the creditor may not establish his claim, that fails here, because, *ex hypothesi*, he has a judgment. Our decision ought to be with reference to the right when the money was paid in, and then it could not be withdrawn from the creditor.

Keating and Montague Smith, JJ., concurred.

Rule refused.

Clarke et al. v. The Tyne Commissioners.

Practice—Costs—Change of venue—Undertaking where no order drawn up.

A summons to change the venue from London to Northumberland was indorsed by the judge "No order—the plaintiff undertaking to tax his costs, if successful, as if the cause had been tried in Northumberland." The cause occupied two days in trying at the Guildhall, after having been four days previously in the paper. The plaintiff having obtained a verdict, the master taxed on the principle that the cause would have taken only two days at Newcastle; he also disallowed the travelling expenses of witnesses from Strood to Newcastle, who lived near Newcastle, but at the time of the trial were actually at Strood; and compensation for detention of seafaring witnesses on shore.

Held, that the undertaking was binding, though no order had been drawn up; and that the principle on which the master taxed the costs and the claims he disallowed were within his discretion: and

Per Montague Smith, the principle of taxation was right.

[C. P. Jan. 22.—16 W. R. 480.]

Rule calling on the defendants to show cause why the master should not be at liberty to review his taxation of the plaintiff's costs.

The action was brought to recover damages from the defendants for injury caused by a collision in the river Tyne, at Newcastle, and the plaintiffs laid the venue in London. After notice of trial, the defendants took out a summons to change the venue to Northumberland, principally on the ground that most of the witnesses resided at North and South Shields, in the neighbourhood of Newcastle. The summons was heard before Keating, J., by adjournment, on the 8th of February, 1867, when his Lordship made upon it the following indorsement:—"No order—the plaintiffs undertaking to tax their costs, if successful, as if the cause had been tried in Northumberland." The cause was in the paper at the Guildhall sittings, on the 1st, 2nd, 3rd, 4th, 5th and 6th of July; the trial lasted during the 5th and 6th, and ended in a verdict for the plaintiffs for £354 12s. 11d., the amount of their claim. Subsequently the taxation was begun, and pending it the plaintiffs twice took out a summons to show cause why the master should not tax in a different way; these summonses were, however, dismissed by Keating, J., and the case was referred to the court by the present rule.

The items in the plaintiff's costs disallowed by the master were as follows:—the expenses and loss of time of the plaintiff's attorneys, and witnesses for the days during which the cause was in the paper, over and above the two days actually employed in trying it. The expenses of witnesses who, though resident at South Shields, were at the actual time of the trial elsewhere; and compensation to seamen for engagements given up in consequence of their being subpœnaed to attend at the Guildhall, and for detention on shore. Two of the witnesses, though resident at South Shields, were at the time of the trial at Strood, in Kent, and the master disallowed a claim for their travelling expenses from Strood to Newcastle.

T. Jones, Q. C., and *Gainsford Bruce* showed cause, and contended that the undertaking indorsed by the judge on the back of the summons was binding on both parties, and that it was not necessary to draw it up and serve it, because, as there was "no order," there was nothing to draw up. The master was right in taxing on the supposition that the cause had been actually tried at Newcastle at the Spring Assizes, at which there were only two working days to dispose of the cause list; consequently it would have been wrong to take into consideration the days during which the cause was in the list at Guildhal before the trial.

Giffard, Q. C., and *Rew*, in support of the rule. There was no such undertaking given; but to avail themselves of it the defendants should have drawn up the order and served it: *Joddrell* v. ——, 4 Taunt. 253; *Wilson* v. *Hunt*, 1 Chitty's Rep. 647. But assuming the undertaking to be binding, the master taxed on a wrong principle. He only allowed two days' expenses, because the Newcastle assizes only lasted that time. But he ought not to have entered on any such speculation, for the undertaking was meant to apply only to the geographical difference between the two places, and not to the ordinary incidents of the cause. In the case of the witnesses who came from Strood, but