& Co., an apparently accepted by them, at least they have retained the notes and accepted the cash, and I think by so doing they are precluded from now contesting the confirmation of the insolvents discharge.

Messrs. Geo. Winks & Co. have not proved their claim, and it is contended on their behalf that they have a right to appear and oppose the discharge—on the other hand it is urged that as they have not proved their claim, they are not to be considered as creditors, and have no right to oppose. I think under the Act of 1864 they have a right to come here and oppose. Sub-section 6 of section 9 provides, that "*any creditor* of the insolvent may appear and oppose" the confirmation of the discharge—and sub-section 5 of section 12 defines a creditor to mean "every person to whom the insolvent is liable, whether primarily or secondarily, and whether as principal or surety." It is admitted that Messrs. Winks & Co. are creditors, the insolvents have inserted their claim in the schedule of their liabilities, and it appears by the affidavit of Joseph Lawson that cash for the first instalment and composition notes for the other instalments, pursuant to the terms of the deed, have been lodged in the hands of the official assignee for Messrs. Winks & Co. I think there can be no doubt as to their right to contest.

The confirmation of the discharge of the insolvents is opposed on the grounds:—

1st. That the insolvents have not procured the requsite proportion in value of creditors to execute the deed.

2nd. That the deed is unequal in its provisions.

Exception is taken to the execution of the deed by R. A. Hoskins & Co., John Macdonald & Co., and A. C. Sutherland & Co., on the ground that being executed by attorney or agent, there is not sufficient proof of the authority to execute, that the powers of attorney should be proved and produced. Even if these three claims are not included among those who assented, there would still be a sufficient proportion of creditors who have executed; but I think the proof of authority is sufficient. Affidavits made by John Macdonald, A. C. Sutherland, and a partner of Hoskins & Co., are filed—proving that the agents who executed for these creditors respectively had authority, and that their acts had been duly confirmed. All that is required, I think, is to satisfy the mind of the Judge with a reasonable degree of certainty that the deed was executed by a proper proportion of creditors, and that the same degree of certainty would not be necessary as on a trial between party and party. I hold, then, that proof of execution and of authority to sign is sufficient in all the cases. There are only two secured creditors, Marcus Holmes and H. A. Joseph, whose claims amount to $4570 00, and it is contended by the opposing creditor that these claims should be included in estimating the amount of indebtedness and proportion in value of those who have executed. Sub-section 5, of section 5, provides for the case of creditors holding security, undoubtedly they are creditors who may prove prior to any election to accept the security in satisfaction of their claims. But if the secured creditor elects to accept the security and not to prove, and the official assignee on behalf of the creditors assents to his retaining the security on these terms he certainly ceases to be a creditor who can prove, and his debt cannot be taken into consideration in estimating the amount of indebtedness. That is the case with these two secured creditors, they both elected to accept the securities they held, and not to prove, and it appears by the affidavit of the assignee that he has assented to the retention by them of their securities.

Exception is also taken to the execution of the deed by Wakefield, Coate & Co., on the ground that it is signed by one for the firm after the dissolution of the partnership, for the purpose of winding up the business and fulfilling engagements made during the existence of the partnership. Each partner has the same authority after dissolution to sign the name of the firm, and execute deeds of compositlon for debts due to the firm as he had before; Mr. Coate might have signed the name of the firm without signing for them in his own name. The execution by Wakefield, Coate & Co., is sufficient. (See Collyer on Partnership, Story on Partnership, 15 Ves. 227, 1 Taunt, 104.)

The next question to be decided by me, is, whether the deed of composition is unequal in its provisions. It is made between the *undersigned* parties, corporations, and firms, &c., of the first part, and the insolvents of the second part, and contains a covenant by the insolvents with the *parties thereto* of the first part. to deliver the notes mentioned in the deed on request, &c., the covenant being with the parties who have signed and not with the whole body of creditors, it is contended that those who have not executed the deed are not in as formidable a position as those who have, not being in a position to enforce the covenant, and *Ex parte Cockburn*, 9 L. J. Rep. 464, is relied on by the contesting creditor.

There is a wide difference between the English Bankruptcy Act of 1861, under which most of the decisions have taken place, and our Insolvent Act. The 187th section of the English Act contains this clause:—"And if the Court shall be satisfied that the deed has been duly entered into and executed, and that its forms are reasonable and calculated to benefit the general body of the creditors under the estate, it shall by order, &c." There is no such clause in our Act, and there is a great deal of force in the argument of Mr. Lazier for the insolvents, that the grounds of opposition by creditors must be confined to those mentioned in sub-section 6 of section 9, and I think that under our Act the mere fact of the non-executing creditors not being so favourably placed as those who executed, would not be sufficient to avoid the deed or to refuse the confirmation, unless the inequality between the creditors or any other creditors of the insolvents amounted to a fraud upon any of the creditors or a fraudulent preference in favor of some of them. (If the statutes were alike the following cases would bear on this point: *Ilderton* v. *Castrique*, 32 L. J. C. P. 206; *Benham* v. *Broadhurst*, 34 L. J. Ex. 61; *Chesterfield Silk Co.* v. *Hawkins*, 34 L. J. Ex. 121; *Gresty* v. *Gibson*, L. R. 1 Ex. 112; *Reeves* v. *Watts*, L.R 1, 2. 13, 412; *McLaren* v. *Bapter*, 36 L. J. C. P. 247; *Tetley* v. *Wanless*, 36 L. J. Ex. 25; *Blumberg* v. *Rose*, L. R. 1 Ex. 232.)

In the case of the deed now under consideration, I think on the state of facts as shewn in the affidavits filed, and on examination of the deed itself, that there is no inequality between the assenting and non-assenting creditors, even