

[Insolv. Case.]

RE HUFFMAN—IN RE SULLIVAN—IN RE HUNTER.

[Prob. Case.]

INSOLVENCY CASES.

(Before Hon. Geo. SHERWOOD, Judge of the County of Hastings.)

IN RE HUFFMAN, AN INSOLVENT.

*Insolvency—Notice.*Notice of application for discharge in *Canada Gazette*, and not in *Local Gazette*. Held sufficient.It is sufficient to publish notices of application for discharge in the *Canada Gazette*.

The insolvent filed his petition on the 2nd Feb. 1868, for discharge.

Jellet, appeared for a creditor, and objected, that notice of application should have been published in the *Ontario Gazette*.

Other matters came up in this application to which it is not necessary to refer.

SHERWOOD, Co. J.—By the 91st clause of the Insolvent Act, 30 & 31 Vic. c. 3, I find among other things that the Parliament of Canada has exclusive legislative powers in matters of bankruptcy.

The Insolvent Act of the late Province of Canada, requires that all notices under that statute shall be published in the *Canada Gazette*, and this paper was, prior to the passing of the Act of Confederation above mentioned, the evidence of all official notices in matters relating to the administration of justice in the former Province of Canada.The 3rd sec. of the Act of the Ontario Legislature, 31st Vic. cap. 6, enables the Lieutenant Governor to authorize the publication of an official gazette, to be called the *Ontario Gazette*, for the publication of official and other matters, and all such matter whatever as may be from time to time desired; and that all advertisements, notices and publications, which by any act or law in force in this Province, are required to be given by the Provincial Government or any department thereof or by any sheriff or officer, person or party whatsoever, shall be given in the *Ontario Gazette*, unless some other mode of giving the same be directed by law. And if in any act in force in Ontario, of the late Province of Upper Canada, or of the late Province of Canada, any such notice is directed to be given in the *Upper Canada Gazette* by authority or in the *Canada Gazette*, the *Ontario Gazette* shall be understood to be intended; and it repeals c. 13 of the Con. Stat. of Canada, which heretofore related to that part of the late Province of Canada, now Ontario.If the Act of Ontario above mentioned, is to be construed literally, it interferes directly with the statute of Canada respecting insolvency which is now in force in Ontario, and deals with a subject which the Imperial Legislature has placed exclusively under the Parliament of Canada. I must confess I feel great reluctance in coming to the conclusion I have. It appears however to me, on full consideration of the subject, that the Act of Ontario was only intended to apply to notices that were connected with matters over which it had control, either exclusively or jointly, with the Legislature of Canada, and not to those within the authority of the last mentioned Legislature. The Act of the late Province of Canada should govern, I think, as to notices in bankruptcy, and the publication of notices in the *Canada Gazette* is therefore sufficient.

Discharge ordered, but on other grounds suspended for six months.

IN RE JOHN SULLIVAN AN INSOLVENT.

Assignment, to what official assignment—Assignment must be in duplicate—Neglect to keep books of account.

This was an application for the discharge of the insolvent. It was opposed on the ground that the insolvent, according to his own statement, never was in business for himself, but had for several years both worked as foreman for his father and brothers in getting out and bringing lumber down the Trent. They resided in Seymour, and their business was there transacted, except as to receiving advances and selling their lumber, which was principally done at Trenton. The insolvent set out in his petition that at a meeting of his creditors called pursuant to the statute, his sole creditor attended the meeting, and appointed William Henry Delaney of the Township of Murray, in the County of Northumberland, his assignee, who refused to act, and that on such refusal, he appointed George Dean Dickson, an official assignee for the County Hastings. The assignment appeared only to have been executed in one part to the official assignee, and no copy was filed with the clerk of the court.

Lazier opposed the discharge of insolvent on the part of his creditor.

SHERWOOD, Co. J.—The 4th sub-sec. of the 2nd sec. of the Insolvent Act, provides (among other things), if the assignee appointed at the meeting refuses to act, the insolvent may make an assignment to any official assignee of the county in which the insolvent has his place of business. The insolvent has no place of business, and was foreman to persons whose place of business seems to me, by his own statement, to be within the County of Northumberland; and we may fairly infer that the insolvent's place of business was the same, if he had any business at all. His residence was within that county, and I think that the assignment should have been made to the official assignee of that county.

The 6th sub-sec. of the same section enacts that the deed or instrument of assignment if executed in Upper Canada shall be in duplicate, and although it may be (as argued by the insolvent's counsel) that the assignment in one part passed all the insolvent's property to the assignee, it does not comply with the statute which is mandatory.

The insolvent has not, subsequent to the passing of the Act, kept any account book, shewing his receipts and disbursements in cash, nor was he able to give any account of them on his examination.

For these reasons I must refuse to grant his discharge.

PROBATE.

IN RE HUNTER.

(In the Surrogate Court of the County of Norfolk.)

Appointment of Guardian—Practice—Notice—When application may be made—Reasons for application—Second Marriage of Mother—Caveat—&c.

This was an application made by the infant children of one John Hunter deceased, for the appointment of David Hunter as their Guardian.

In this notice, served upon the mother, and also in the published notice, it was stated that appli-