

HAGARTY, J.—The learned judge below considered the insolvent's conduct to be reprehensible in not keeping proper books of account, and suspended his discharge for six months. I do not think it wise to interfere with the exercise of such a discretion on the part of a judge who has heard the examination of the insolvent, and been cognizant of the various proceedings in the case, except in a very clear case in which the appellate jurisdiction is necessarily invoked to prevent an undoubted injustice.

I think that the learned judge acted with extreme leniency, and possibly took a milder view of the bankrupt's misconduct than I should have done, judging wholly from the papers before me. Had he, with his superior opportunities of forming a correct opinion, passed a much more severe sentence, I should certainly not interfere with it on the insolvent's application. I think the insolvent's neglect to keep proper books a most serious breach of duty, causing great possible injury to his creditors, and tending to raise strong distrust of his integrity. The evidence of his being a very illiterate man suggests the only possible excuse, and weighed, I presume, with the learned judge. It might perhaps be said that it was not very prudent for his creditors to trust a man so unfit for the conduct of business or the keeping of accounts with such large quantities of goods on credit. I do not differ from the learned judge's view as to the alleged preference. As to the neglect to keep proper books, I think it would be well always to punish such a breach of duty in a severe and exemplary manner.

We have in this country in our legislation done everything to favour debtors and render the escape from liability as easy as possible to them. It will be well at all events that the very easy requirements of the Insolvent Act on debtors asking for their discharge should be peremptorily insisted on, and proper punishment awarded to any breach of the trader's duties in conducting his business.

I gladly avail myself of the power given me by sub-sec. 6 of sec. 7 of the act, and, while feeling bound to dismiss the appeal, do so without costs.

I think Mr. Lamb's creditors had just

ground for feeling indignant at his conduct and opposing his discharge, and endeavouring to have some punishment inflicted upon him.

INSTRUCTIONS AS TO COSTS.

Some difference of opinion has recently arisen respecting the propriety of a judge instructing a jury what damages will carry costs. It has been customary in England for a judge to refuse to instruct a jury on this head. Chief Justice Erle, however, in the recent case of *Athol v. Seman*, adopted the contrary course, and gave the information asked for. The *Solicitors Journal* thinks that the best way is to leave the jury in the dark as to the exact consequences of their verdict. This is also the opinion expressed by Baron Bramwell, in another recent case, *Kelly v. Sherlock*, Law Rep. 1 Q. B. p. 691. The report informs us that the jury having retired, returned into Court, after an hour and a quarter, saying they could not agree; and one of them inquired what verdict would carry costs. The learned judge (Baron Bramwell) replied, that it was a question which he had discussed with the late Lord Campbell, and the conclusion come to was, that the question was one which ought not to be answered by the judge. It was for the jury to say, if they found for the plaintiff, to what extent he had been damaged, irrespective of the effect the verdict might have on the question of costs. Otherwise they might actually defeat the law. After some further discussion, a juror asked the learned judge to repeat what he had said respecting costs. On which the learned judge said: "The law supposes that you will give such damages as you think are really equivalent to the injury sustained by the plaintiff. And it says, in certain cases, for the prevention of frivolous actions, if the plaintiff does not recover a certain amount, he shall try his action at his own expense. Now it seems to me that you ought to say to yourselves, 'we will give a certain amount,' but the amount ought not to be regulated by its effect upon the costs. Because it is manifest, if you say we will give a certain sum in the hope it will carry costs, that you thereby defeat the object of the law."