many cases, that a patent may issue for the combination of previously known implements, or elements. That this must be so, is apparent from the limited number of the mechanical powers though the combinations of them may be very numerous.

Bethune, Q.C., and *Moss*, for plaintiff.

The Attorney General (*Mowat*) and *Fitzgerald*, Q.C., for defendant.

INSOLVENCY CASE.

Re Harris, an Insolvent.

Insolvent Act of 1875—*What constitutes "default of appointment" of assignor—Interpretation of* 38 *Vict. cap.* 16, *secs.* 22, 29 *and* 102.

It is improper for the official assignee at the first meeting of creditors to act as chairman.

When the majority of creditors in numbers vote one way as to the appointment of an assignee, and the majority in value another way, there is not a "default of appointment," and under the circumstances of this case it was properly brought before the Judge, under sec. 102, to decide as to who should be assignee.

A person properly selected as assignee is not ineligible because he is not an official assignee, or a resident of the county.

[Brockville, April 13, 1876.]

The insolvent in February, 1876, made an assignment under the Insolvent Act of 1875 to E. H. W., an official assignee for the County of Grenville. A meeting of the creditors was called for 28th March, to receive statements of the insolvent's affairs and to appoint an assignee, if they should see fit. At this meeting the official assignee was appointed chairman, and acted as such. A motion was made to appoint him assignee of the estate, to which an amendment was moved to appoint one A. M. to that position. Upon a vote being taken 19 creditors representing $9,334.14 in value, supported the motion; and two, representing $22,150.00, the amendment. The chairman held that there was "no assignee appointed." (The effect of a default of appointment being that he would, under sec. 29, become assignee.)

Some of the creditors who voted with the majority in value, brought the matter before the Junior County Judge of Leeds and Grenville by petition, asking that he should decide upon the motions respectively, and declare A. M. the duly appointed assignee, or should make an order directing the official assignee to call a meeting of the creditors to appoint an assignee. A summons having been issued returnable on 13th April.

Walker shewed cause. He contended that the matter did not come within the purview of section 102, as no resolutions were moved to be submitted to the Judge; that there was a "default of appointment" under sec. 29, and that the official assignee, therefore, became assignee; that there was no power to appoint A. M. assignee, as he was not an official assignee, or a resident of the United Counties; and that the Judge had no power to command the official assignee to call a meeting to elect an assignee.

Pinhey contra, contended that the words "default of appointment," refer to a case where no meeting has been held, or some similar case. The resolutions voted on at the meeting are brought before the Judge by the petition, and he has a right to decide between them under sec. 102 of the Act.

McDonald, J. J. (after drawing attention to the fact that the official assignee ought not, under sec. 22 of Act, to have been chairman of the meeting, and commenting strongly upon the impropriety of his occupying that position.) As to the question whether there was a default of appointment under sec. 29, or whether this was a case within sec. 102, my decision is that the words "default of appointment" do not refer to a case where the majority in number vote one way and the majority in value the other way, for I hold that in such an event there is no default but really an election, although the result of that election may not be known, until the judge has decided between the conflicting resolutions, or parties, or, as I might say, upon the double choice. I presume, if a meeting were called, but the creditors entitled to appoint an assignee did not attend, or attending, did not make any appointment, not seeing fit to do so, (see form 9 to Act,) there would be a default, Bumps on Bankruptcy, 466. So if there was a tie in numbers and a tie in value, (of course an exceedingly improbable contingency) there might possibly be a default. But I hold that in this case there was not a default, and that it is my duty to decide under sec. 102, as between the views of each section. Those views as expressed in the resolutions submitted and voted upon at the meeting, are sufficiently brought before me by the petition and the minutes. The latter show that one of the petitioners moved a resolution that the offer of the insolvent be not then accepted, and to adjourn the meeting from the 28th March to the 18th April, and that an amendment, which did not really effect the question of adjournment, but merely the offer of the insolvent, was supported by the majority in number and declared carried. Had