Sec. 2, sub-sec. 3, also refers to direct liabilities *then actually overdue:* on such latter securities the creditor may vote, but not on indirect liabilities which are not due.

By sec. 3, sub-secs. *b, c, i,* a creditor, whose debt is not due, may be injured, and under them he may state, in respect of his immatured debt, a cause of insolvency which affects him equally with a creditor having a claim which is past due.

The affidavit the creditor has to make, by the form given under sub-sec. 7, when he applies for a warrant against his debtor, is that "the defendant is indebted to the plaintiff" in a particular sum, stating the value of the debt, and, to the best of the creditor's belief, that the defendant is insolvent within the meaning of the Act, and has rendered himself liable to have his estate placed in compulsory liquidation. The 7th sub-sec. does not use the phraseology that the defendant *is indebted* to the plaintiff, which the form does, but that the plaintiff *is a creditor* of the insolvent; no doubt very different language; but the statement that the insolvent *is indebted* may be read by the light of the statute, which in effect makes an undue debt to be due, and so the party *indebted* for the purposes of the Act.

By sec. 5, sub-sec. 2, "all debts *due and payable* by the insolvent at the time of the execution of a deed of assignment, or at the time of the issue of a writ of attachment under this act, and all debts, *due, but not then actually payable,* subject to such rebate of interest as may be reasonable, shall have the right to rank upon the estate of the insolvent."

By sec. 9, sub-sec. 3, the consent in writing of the proportion of creditors specified to the discharge of a debtor "absolutely frees and discharges him from all liabilities whatsoever [except those hereinafter excepted] *existing against him and proveable against his estate, whether such debts be exigible or not* at the time of his insolvency, and whether direct or indirect;" and, lastly, the word *creditor* by sec. 12, sub-sec. 5, shall be held to mean "every person to whom the insolvent is liable," whether primarily or secondarily, and whether as principal or surety.

The respondent was certainly a *creditor* of the appellant at the time when these proceedings were taken: he had a direct and primary liability against him: his claim was *due* under sec. 2 and the oath to Form B, and under sec. 5, sub-sec. 2; although, according to sec. 2, *not actually overdue,* or according to sec. 5, sub-sec. 2, *not then actually payable,* or according to sec. 9, sub-sec. 3, *whether exigible or not;* and such a debt he would be barred by the discharge under the last mentioned section from ever enforcing against the appellant, because by that section, and also by sec 5, sub-sec. 2, it was proveable against and entitled to rank upon the estate of the insolvent.

The consideration of these enactments of the statute leads us to the conclusion that our Insolvent Act must in this respect be construed as the Bankrupt Acts are in England, and that a creditor having an immatured debt may commence proceedings against his debtor, who is insolvent, in like manner as he might have done if his debt had been overdue at the time, although there is no direct enabling clause to this effect in the statute, as there is in the English Acts.

The right exists, by virtue of his position as a creditor, and to prevent the exercise of this right would require a disqualifying clause such as was originally contained in the Act of 7 Geo. I. ch. 31

The averment in the affidavit of the creditor before alluded to, that the insolvent *is indebted* to him, must be construed according to the general tenor, effect and purpose of the Statute; and by the Act the insolvent *is* indebted to him. The expression cannot, then, be said to be inconsistent with the purview and intent of the Act.

Under the words "all debts owing or accruing," that which is *debitum in presenti,* though *solvendum in futuro,* is attachable: *Jones* v. *Thompson* (E. B & E. 63); *Dresser* v. *Johns* (6 C. B. N. S. 429).

The cases referred to by the learned judge in the court below, of L R 1 C P. 204, and L R. 1 Exch. 200, show that the word *creditor* as used in the Bankrupt Acts is not applied to all persons who are creditors; that it does not apply to a person who recovered judgment for a debt contracted after the debtor became a bankrupt, but to a creditor "who can come in under the bankruptcy and have the benefit of it, whether his claim be strictly a debt or not."

The judgment of the learned Judge of the County Court has been very carefully prepared, and is fully and satisfactorily sustained by his reasoning.

As to the merits,—the application to have the proceedings set aside, because the respondent was not in fact insolvent, or amenable to the Act; we think that evidence of the facts contained in the petition might have been and may still be admitted; and no doubt, where the effect of such proceedings is to accelerate the payment of a debt but lately contracted, by several years, they should be looked upon with that natural degree of suspicion which so great an advantage to the creditor unavoidably creates. We are of opinion the appeal must be disallowed, excepting that the debtor should be allowed a further time to sustain the allegations of his petition, if he can; upon which the learned Judge, after hearing the testimony on both sides, legally advanced and admissable, will of course pronounce his own opinion. We should not probably require this to be done in an ordinary case; but in so unusual and peculiar a one as this is, and the debtor not owing more than about $100 beyond this creditor's debt, and having apparently quite a large property in possession, the very fullest opportunity should be offered to the debtor to scrutinize the proceedings of a creditor, whose interest is so obviously opposed to the delay of waiting for his debt until it is due, and is so plainly benefited by anticipating, if he can, the long day of payment he agreed to give,

Rule disallowing the appeal, excepting that the debtor be allowed a further day, to be named by the Judge of the County Court, to support his petition by evidence, if he can, and that the parties be then reheard therein on the merits; and on the whole, without costs, if the residuary proceedings be finally set aside by the learned Judge below; but if they are directed to stand on such rehearing, the whole costs should be costs against the estate.

*Rule according y.*