

the Power of Attorney was sufficient, and that in that respect, the 27th Section had been conformed to. The appointment of an Assignee, to replace Mr. Dods, who has resigned, should be carried in pursuance of the 27th Section; the creditors, therefore, who were recognized as such, whose claims were admitted, and Mr. Tucker whose claim was admitted because it was proved, had a right to vote, and if his claim was held sufficient, in the opinion of Mr. Justice McCord, he could not, this day, be cut off from his right of voting on the present occasion.

DECIDED, that the admitting by Mr. Justice McCord, of Mr. Tucker's vote, because both the Power of Attorney and the proof thereof, as well as the mode of substantiating his claim, were held good in his opinion, (Sect. 27th) is conclusive. Then was the time to object, no objection was raised; the votes were recorded. It is clearly pointed out on the 32d Section how and in what manner other Assignees are to be chosen, in case of death, removal or otherwise; it is to be effected "by such vote as is provided in the twenty-sixth Section of this Act, for the choice of Assignees, &c., at any regular meeting called by order of the Judge or Commissioner for that purpose, and called in his discretion, on the application of a majority of the creditors who have proved their debts either in number or value, to remove &c. . . ." Now, this Mr. Tucker's Power of Attorney and claim have been admitted, his claim, his debt has been proved, so far as the voting for this appointment of an Assignee renders it necessary; he is therefore, this day, entitled to vote, in pursuance of the provisions of the 32d Section. This motion which for want of proper notice, could not be entertained, should be and is rejected, inasmuch that it is not borne out by law.

When the votes were about being recorded, Mr. Carter made another application, the object whereof was to cause Mr. Dods, the former Assignee's claim, to be set aside, on various grounds, which, if true, would justify the inference that his claim is founded on fraudulent and illegal transactions.

This application was resisted by Mr. Rose, on the same grounds.

In each case there is a final appeal to the Court of Review, which, on examining and reviewing all the proceedings, may set aside, and the decisions of Mr. Justice McCord, as well as the present, if found to be erroneous.

APPLICATION REJECTED—AN ASSIGNEE APPOINTED.

Judge McCord and Judge Badgely were stated by Judge Mondelet, to concur in the above opinion.

THE COURT. (C. Mondelet, Esq. presiding.) There has been no notice given; the application, therefore, cannot be entertained. But on the merits of it, the Court is with Mr. Rose; it is ready to follow up the principle it has laid down, on the previous questions. The end of the present application, if attained, would inevitably, have the effect of setting aside (without and previous to a regular contestation of Mr. Dods' claim) a judgment rendered therein by this Court, and thereby converting the Court of Bankruptcy into a Court of Appeals. The decision given on the pending application, bears upon the present.