

his creditors for sums of \$100 and upwards, and representing three-fourths in value of the liabilities mentioned in the statement annexed to the deed of composition executed by him and filed in court.

One James Watson appeared claiming to be a creditor, and to have a right to object to the confirmation of the discharge; his name did not appear in the statement of liabilities prepared by the insolvent, and annexed to the deed of composition. He also contended that the insolvent should be present in order that he might be examined pursuant to sub-sec. 8 of sec. 10.

Sadleir, for the insolvent, stated that he disputed the claim of Mr. Watson, and argued that Watson had no right to be heard in opposition to the application: that his claim, if he has one, would not be barred, as sub-sec. 8 of sec. 9 only discharges the insolvent from the liabilities which are mentioned and set forth in the statement annexed to the deed of assignment, or in any supplementary list of creditors, and as his rights are not affected in any way by the discharge, he has no right to be heard in opposition to the application.

LOGIE, Co. J.—I think the only question is, whether or not Mr. Watson is a creditor; if he is, he has a right to appear and be heard in opposition to this application, although not named in the statement of liabilities annexed to the deed of composition. By sub-sec. 6 of sec. 9 it is provided that "upon such application any creditor may appear and oppose the confirmation of the discharge." The right to appear is not limited to the creditors named in the schedule. It may perhaps be the case that the insolvent is only discharged from those debts named in the statement annexed to the deed of assignment or composition, but that is not enough; every creditor has an interest in the estate of the insolvent, and a right to participate in any dividends that may be declared, and for that purpose is entitled to prove his account and rank upon the estate, and also to oppose the insolvent's discharge. The only method of proving debts given by the Insolvent Act is before the assignee, under sub-sec. 13 of sec. 5; the judge has apparently only an appellate jurisdiction in respect of the proving of debts.

In this case, on being satisfied by affidavit that a bona fide claim to rank as a creditor is made by Mr. Watson, I shall adjourn this meeting, in order to enable him to prove his debt before the assignee. I think, too, that the insolvent should be present when application is made for the confirmation of his discharge, in order that he may be examined, if any creditor desires to do so.

IN THE MATTER OF HAMILTON AND DAVIS INSOLVENTS.

A person summoned as a witness cannot refuse to give evidence respecting his own dealings with the insolvents by alleging that he is a creditor.

T. C. M., a confidential clerk, and manager of the business of the insolvents, was summoned as a witness at the instance of the assignees, by a judge's order granted under the authority of sub-sec. 4 of sec. 10 of the Insolvency Act.

In the books of the estate he appeared as a debtor to a considerable amount, but claimed to

be a creditor, alleging that he had a set off exceeding in amount his indebtedness to the estate.

After being examined generally touching the estate of the insolvents, he was asked about his own account, when he objected to produce it, or give evidence respecting his own dealings with the insolvents.

Sadleir, for the witness, contended that a creditor has no right to examine another creditor about his claim against the estate until he seeks to prove his account, and to rank upon the estate: that it would be unjust to compel the witness to give such evidence, as his statement might be used against him, while he could not use them in his own favour.

LOGIE, Co. J.—Under sub-sec. 4 of sec. 10, any person may be examined as to the estate or effects of the insolvents, but only on a judge's order granted upon petition; no judge acting in insolvency would allow a witness who claimed to be a creditor to be examined at this stage of the proceedings touching his own account, unless it appeared to him necessary in the interest of the creditors that he should be so examined. In this case the witness was manager of the business of the insolvents; in the books kept chiefly by himself he appears to be largely indebted to the estate, and his claim, which is in the nature of a set off, arises out of his transactions with the insolvents; and I think it is necessary, in order to ascertain whether the debt apparently due by the witness is an asset or not, that he should answer the question put to him respecting his own account.

The witness then produced his account, and an adjournment was asked for and granted. At the next meeting, before resuming the examination,

LOGIE, Co. J., said—At the time of granting the adjournment, I was asked to look into the point raised by Mr. *Sadleir*; I have done so, and I am of opinion that my decision was correct. The cases of *Ex parte Gopddie*, 2 Rose, 330, cited in *Deacon & DeGex Bankruptcy Law*, 165, and *Ex parte Chamberlain*, 19 Ves. Jr. 481, are in point. In the last case, the Lord Chancellor (*Eldon*) said, "The Commissioners must proceed with the examination, as, although the witness thinks himself a creditor, he may not be so." And again, "The question whether the testimony will be useful or useless is very different from that of the right to examine; what may be the effect is for the commissioners to decide, but the witness cannot set up the objection.

ENGLISH REPORTS.

REGINA V. ROBINSON AND ANOTHER.

On an indictment for feloniously receiving goods, knowing them to have been stolen, it is unsafe to convict a party as receiver on the evidence of the thief, unless it is confirmed.

On an indictment for stealing and receiving a mixture, it appeared that the thief had stolen two sorts of grain, and then mixed them and sold them to the prisoner—*Held*, that the latter could not be convicted on such an indictment; and there being no evidence but that of the thief, the Judge would not amend.

[Hartford Crown Court—Spring Assizes, 1864.]

Indictment against one Saunders for stealing, and against Robinson for feloniously receiving. The indictment alleged that Saunders, "one