

"There are, however, two charges made against the insolvent respecting his conduct before the assignment to which no answer appears to be given. It is shown that in the month of April, 1865, within less than three months before the assignment, the insolvent being indebted to his shopman, McCan, in \$300 for wages and borrowed money, gave him promissory notes of his customers to the amount of \$400, in full satisfaction of the debt. There can be no doubt that this transaction was wholly illegal and amounted to a fraudulent preference; however natural it may be for a man pressed by his servant, who was also his creditor, for wages and loans, to satisfy such a claim in the way the insolvent did, yet the provisions of the Insolvent Act of 1864 clearly point out that such a payment is a fraud upon the other creditors.

"The second charge made against the insolvent is, that he did not keep a cash book nor other sufficient books of account suitable to his trade, which is not denied by the insolvent.

"Under these circumstances, although I do not consider with the creditors, that the insolvent should never be discharged at all, yet it seems right that some penalty should be inflicted in consequence of the faults committed by him in the above mentioned instances. I therefore order that his discharge shall be suspended until 1st February, 1867, and will sign an order granting his discharge suspensively to take effect on that day."

That in accordance with the said judgment said judge granted and signed an order bearing date on the said sixth day of October, A. D. 1866, as follows:

"INSOLVENT ACT OF 1864.

"In the matter of Thomas Lamb, an insolvent.

"Whereas Thomas Lamb, of the Town of Napanee, in the County of Lennox and Addington, Merchant, made an assignment under the Insolvent Act of 1864, bearing date upon the first day of June, in the year 1865; and whereas after the expiration of one year from the date of the said assignment, having given due notice thereof, and having in all respects complied with the provisions of the said Act, the said Thomas Lamb did on the tenth day of

August, in the year one thousand eight hundred and sixty-six, present his petition to me, James Joseph Burrowes, Judge of the County Court of the County of Lennox and Addington, praying for his discharge under the said act, and whereas the said insolvent has undergone a full examination before me touching his affairs.

"Now therefore I, the said judge, after hearing the said insolvent and such of his creditors as objected to his discharge, and all the evidence adduced as well on the part of the said creditors as of the said insolvent, and having duly considered the said allegations and proofs, do hereby according to the form of the said Insolvent Act grant the discharge of the said Thomas Lamb suspensively, and do order that such discharge shall be suspended until and shall go into operation and have effect upon and after the first day of February, in the year one thousand eight hundred and sixty-seven.

"Witness my hand," &c.

The petitioners being dissatisfied with the said order and decision, made an application to a judge of one of the Superior Courts of Common Law, presiding in Chambers in Toronto, to be allowed to appeal from the said order and decision, and on the seventh day of November, A. D. 1866, an order was granted by the Chief Justice of Upper Canada, allowing the petitioners to appeal to one of the judges of the Superior Courts of Common Law in Chambers from the said order.

That since the allowance of the said appeal, and within five days therefrom, the petitioners gave security in the manner required by the said Insolvent Act of 1864, that they would duly prosecute the said appeal, and pay all costs.

The petitioners therefore prayed that the said order and decision of the judge of the County Court of the County of Lennox and Addington might be revised, and the same reversed, and the discharge of the said insolvent, Thomas Lamb, under the said act might be absolutely refused, or that such order be made in the matter as should seem meet.

*Oster* for the appellants.

*Holmsted* for the insolvents.

No cases were cited by either party.