sued," which appears to apply to such an application as the present in all respects, for a claim has been made to the goods which have been taken in execution under the process in question, which has been issued by and under the authority of the Court of Queen's Bench; and such claim has been made by the guardian in insolvency, who is a person not being the person against whom the execution has issued. This very general clause appears to be comprehensive enough to cover nearly every case of the kind which can arise, as, no doubt, it was intended it should.

I have no difficulty, then, in holding this claim to have been rightly made under this branch of the section.

It has been further contended that there can be no interpleader ordered when the claimant is the guardian or official assignee in insolvency, because it is said the law does not confer the title to the property upon such guardian or assignee, and an interpleader proceeding is not necessary in such a case. This is to state the case incorrectly, for such a statement would be just as applicable to every case which does arise under and can be disposed of by the Act relating to interpleader. The case is, that the sheriff is placed in jeopardy between two hostile claimants to the goods, and he desires to be protected; and if his case come within the provisions of the statute which was passed for his relief, he is entitled to protection.

In this case it is suggested and stated by the guardian in insolvency, that the plaintiff's judgment and execution were acts of insolvency, because the debtor did by these means, contrary to sub-section *d.* of section 3 of the Insolvent Act, procure his goods to be taken in execution with intent to defraud, defeat, or delay his creditors; and that the goods taken under this execution were still the goods of the debtor at the time that the insolvency warrant issued, and are therefore now the property of the guardian.

This is a fit question to be tried between the parties, and it is a difficulty which the sheriff is entitled to be relieved from, according to the statute.

An order directing an interpleader will therefore be made.

Order accordingly.

McDonald et al. v. Burton et al.

Special endorsement—Affidavit of merits.

The special endorsement in this case *held* sufficient on the authority of *Hoodsall* v. *Baxter*, 1 E. B. & E. 884, and *Fromant* v. *Ashley*, 1 E. & B. 723.

Wiley v *Wiley*, 6 W R. 649, followed in interpreting the words "disclosing a defence on the merits."

[Chambers, 1865.]

The defendants obtained a summons calling upon the plaintiffs to shew cause why the judgment signed in this case on default of appearance, should not be set aside, on the grounds that the plaintiff could not properly sign final judgment upon the special endorsement upon this writ of summons; or why the defendants should not be let in to defend on the merits.

The special endorsement was as follows: "The plaintiff claims $1,300 for debt and $20 for costs, and if the amount thereof be not paid to the plaintiffs or their attorney within eight days from the service hereof, further proceedings will be stayed."—"The following are the particulars of the plaintiffs' claim: 1865. June 10. Balance of accounts due from defendant to plaintiff for goods sold and delivered and money advanced and lent—the items whereof exceeding in all five folios—$1,129 24." The plaintiffs also claimed interest, &c.

The defendants filed affidavits of merits, which, however, were couched in general terms. A number of contradictory affidavits were filed on both sides on the subject of merits, and explanatory of the non-appearance of the defendants, and an alleged breach of faith on the part of the plaintiffs.

Draper, C. J.—It struck me at first that the special endorsement was hardly a compliance with C. L. P. A., sec. 15, but after reading the language of *Hoodsall* v. *Baxter*, 1 E. B. & E. 884, and also the particulars as stated in *Fromant* v. *Ashley*, 1 E. & B. 723, I do not find that I can properly interfere on that ground.

Then as to the alleged breach of faith. This is unequivocally denied, and the probability would seem to be in the plaintiffs favour.

Still, under the 55th section, the defendant may be relieved on "accounting for the non-appearance, and disclosing a defence on the merits." But the defendants' affidavits only swears to merits in general terms, which the Court of Common Pleas in England in *Wiley* v. *Wiley*, 6 W. R. 649, held insufficient, Mr. Justice Willes observing, "We must construe this word *disclosing* to mean, opening out the defence." This was after the decision in the Court of Exchequer in *Warrington* v. *Leake*, 25 L. J., Exch. 27. I shall follow the case of *Wiley* v. *Wiley* as more in accordance with what I conceive to be the true meaning of the act; and in this case in the Exchequer, the Court were not unanimous, the Chief Baron doubted, and Martin, B., dissented. I must discharge the summons, and with costs, as it fails on every ground urged.

Summons discharged with costs.

McNeil v. Lawless.

Reference at Nisi Prius—Award—Entering Judgment—C. L. P. Act, secs. 158, 160—Practice.

Judgment may be entered upon an award made on a reference at *nisi prius* under the compulsory clauses of the Act although no verdict has been taken, without the formalities formerly required in the case of an attachment for nonpayment of the amount awarded. An order for leave to enter such judgment is not necessary.

[Chambers, Jan. 15, 1866.]

The plaintiff obtained a summons calling on the defendant to shew cause why the defendant should not be ordered to pay to the plaintiff the sum of $255 awarded to be paid by the defendant to the plaintiff, and also $186 05 costs, being the taxed costs of the cause, reference and award, and also to pay the costs of the application, and why the plaintiff should not be at liberty to sign judgment for the amount of the award and costs in default of payment; or why such further order should not be made as the judge might direct.

The record was entered for trial at the last assizes for the County of Grey, when the case