Re Thompson, and the Creditors' Relief Act.

Levy—Notice by sheriff of entry—Priority of costs—Valuing security.

[Whitby, June 15, 1885.—Dartnell, J.J.]

Dartnell, J.J.—The sheriff must take the responsibility of determining when he should make the entry in his books, directed by sec. 5, sub-sec. 2, and *semble* the judge has no authority to direct him to amend his entry, even if he considered it wrong.

There is no priority for costs under the Act.

There is no provision for valuing securities, but the dividend on secured creditors was directed to be retained until further order, so as to await either the realization of the securities, or a valuation thereof by the creditors holding, should they be willing or advised so to do.

COUNTY COURT OF THE COUNTY OF ELGIN.

Munro v. St. Thomas Biscuit and Confectionery Company.

Joint Stock Companie. Winding-up Act, 41 Vict. ch. 5—Ontario Joint Stock Companies' Letters Patent Act, R. S. O. ch. 150—Contributory—Right of paid-up stockholder to petition for winding-up order.

[St. Thomas, Jan. 12, 1886.

The petitioner was a stockholder in this company which was formed by letters patent under R. S. O. ch. 150. All his stock was fully paid up and he became and continued to be its manager from its inception until, through his mismanagement, as alleged, it became involved in financial difficulties. The directors, of whom he was one, borrowed money to keep its business afloat by discounting their private note at the bank. Then the shareholders displaced the petitioner and appointed another manager, and the new manager's name was substituted for Munro's on the renewal of the bank paper. One Reynolds, who was one of the directors, was subsequently pressed by the bank to pay the note overdue, and he was obliged to retire it out of his own funds. He immediately sued the company, and recovered judgment by default. Execution was placed in the sheriff's hands and all the plant and assets of the company were seized and advertised for sale. The petitioner then, upon allegations of fraud on the part of the directors by allowing that judgment to be recovered, presented a petition under section 5 of the Winding-up Act. The period fixed for the duration of the company had not expired, and no event, other than the insolvency of the company, had transpired by which the company could be wound up compulsorily or otherwise, nor had the directors passed any resolution requiring it to be wound up under section 4.

A summons was taken out, calling upon the company and the execution creditor to show cause why the company should not be wound up so that the property seized might be applied in satisfaction of its liabilities and be distributed amongst the members under the Winding-up Act, and an order was made upon the sheriff staying proceedings upon the execution.

Hughes, Co.J., *held* (1) That a stockholder who has paid up his stock in full is not "a contributory" within the meaning of sub-sec. 2 of secs. 3 and 5.

(2) That the execution plaintiff, under the facts stated, had a right to recover a judgment for any debt due to him by the Company as for money paid to their use.

(3) That the petition must be dismissed because it would be unjust to the execution creditor, and there being no fraud shown to exist; and because all the creditors could give notice to the sheriff under the Creditors' Relief Act quite as well as to share under a winding-up order.

The following cases were referred to by the learned judge in the course of his judgment: *Re National Savings Bank Association*, L. R. 1 Chy. 547; *Re Anglesea Colliery Case*, L. R. 2 Eq. 37, 1 Chy. 555; *Rica Gold Washing Co.*, L. R. 11 Chy. Div. 42.

SECOND DIVISION COURT OF NORFOLK.

Coombs v. Michigan Central Ry. Co.

Railway—Accident—46 Vict. ch. 24, sec. 9—Fences—Occupant—Damages not by train or engine—Negligence.

The plaintiff sought to recover $40 damages from the defendants for the loss of his cow which was killed by an employé of defendants under the following circumstances:—It and another cow were grazing in a field adjoining the defendant's railway track which was fenced off therefrom by a fence some 3 feet 8 inches high, which is much less than the height of an ordinary fence, viz., 5 feet, as required by the Railway Act. Plaintiff's cow was simply being pastured there, plaintiff paying the owner of the land so much per month therefor The cows broke down a part of the fence and