

the amount found to be due to the said claimant, with costs of this application.

The costs of the application were taxed on the 25th July, at £5 9s. 6d.

This order and allocatur were served on the assignee, on the 29th July, and the amount payable thereunder and the costs were demanded of him, but he refused to pay.

On the 19th day of August, a summons was issued on the application of the assignee, calling on the claimant to show cause why the order of the 24th of July should not be set aside with, without, or on payment of costs; and on the 14th of August, this summons was discharged with costs. This order discharging the summons was served on the assignee about the 22nd August.

On the 22nd of August, the assignee paid the attorney of the claimant \$47 85, he being satisfied of the validity of his claim to that extent. He refused to pay the costs which were demanded of him in relation to the proceedings taken. The attorney for the claimant, on receiving the amount of Munn's claim for wages, stated that the same was paid and received without prejudice to his claim for costs on the order granted. These orders were made rules of the County Court of the County of Elgin, on the 3rd of Oct., 1865; and, on the 9th of November, writs of *fi. fa.* were issued to the sheriff of the county of Middlesex, on these rules. The first endorsed to levy of the goods and chattels of Andrew Cleghorn £5 9s. 6d., costs taxed on the judge's order; also £5 13s. 6d. costs taxed on making the same a rule of court, and entering judgment thereon, with interest on both sums from the date (29th November), and £1 for the writ. The other was endorsed to levy of the goods and chattels of Andrew Cleghorn £3 0s. 11d., the costs taxed on the order made on the 14th of August, and £5 2s. 6d., being the costs taxed on making the same a rule of court, and entering judgment thereon, with interest on both sums, and also £1 for the writ.

Each writ was also endorsed to pay sheriff's fees and incidental expenses.

It appeared from the affidavits, that the assignee had not appealed against either of these orders to either of the superior courts of common law, or to the court of Chancery, or to any judge thereof, and that no application had been made to set aside the judgments, or either of them.

E. Crombie shewed cause.

C. S. Patterson supported the summons.

RICHARDS, C. J. — The application is made under Prov. Stat. 28 Vic. cap. 18, the 1st, 3rd, 4th, 5th and 6th sections of which are similar to Imp. Stat. 1 Wm. IV. cap. 21, which permits applications for prohibition on affidavits, and directs how certain proceedings shall be taken therein, with provisions as to costs, &c.

The Insolvent Act of 1864, sec. 5, points out the mode in which claims against the estate of an insolvent are to be placed on the dividend sheet; and if any dispute arises as to the right of a creditor to rank on the estate of the insolvent, the matter is first disposed of by the assignee, and he makes his award, and this award may be appealed from. The act seems to be framed in the view that the assignee enquires into the claims of the creditors of the estate. On being satisfied of their correctness, he places

them on the dividend sheet, and any creditor or the bankrupt may object within a certain time to the correctness of any claim so placed upon the dividend sheet.

When any dividend is objected to, or any dispute arises between the creditors of the insolvent, or between him and any creditor, as to the correct amount of the claim of any creditor, or as to the ranking or privilege of the claim of any creditor upon the dividend sheet, he calls for proofs and hears the parties, examines the books, makes an award as to the claim and the costs of contesting it. Unless that award is appealed from within three days from notice of it, the same becomes final.

This award may be appealed from to the judge of the County Court; and if any of the parties are dissatisfied with his decision (in Upper Canada) they may appeal to either of the superior courts of common law, or the court of Chancery, or to any one of the judges of the law courts. This power of appeal is extended by 29 Vic. cap. 18, sec. 15, passed 18th September, 1865, to any order of a judge made in any matter upon which he is authorized to adjudicate under the oath. But the party must apply for the allowance of the appeal within (formerly five, now) eight days from the day on which the judgment of the judge is rendered.

The proceedings in this matter do not seem to have been taken in the order prescribed by the statute, for the assignee does not seem to have decided on the claim before the application was made to the learned judge of the County Court.

The sections of the Insolvent Act referred to on the argument, as applying to the case, were sec. 4, sub-secs. 4 and 16. Sub-sec. 4 declares that the assignee shall be subject to all rules, orders and directions, not contrary to law or the provisions of the act, which are made for his guidance, by the creditors, at a meeting called for that purpose. Sub-sec. 16 provides that the assignees shall be subject to the summary jurisdiction of the court or judges, in the same manner and to the same extent as the ordinary officers of the court, and subject to its jurisdiction, and the performance of his duties may be enforced on summary petition in vacation, or by the court on a rule in term, under penalty of imprisonment as for contempt of court, whether such duties be imposed upon him by the deed of assignment, by instructions from the creditors, validly passed by them and communicated to him, or by the terms of the act.

Sec. 5, sub-secs. 4, 10, 13, sub-sec. 4, in the preparation of the dividend sheet, due regard shall be had to the rank and privilege of every creditor. By sub-sec. 10, clerks and other persons in the employ of the insolvent, in and about his business or trade, shall be collocated in the dividend sheet by special privilege for any arrears of salary or wages due and unpaid to them, not exceeding three months.

Sub-sec. 13 relates to disputes on demands being objected to, which are to be decided by award of arbitrator. I have already stated the substance of it.

Sec. 7, sub-secs. 1 & 2, provides for appeal from the award of assignees to the judge of the County Court, and from the decision of the latter to one of the superior courts of law, or the court