

pears to be before the proviso, thus keeping all the powers together. If it be read after the proviso, then the purpose declared in the new sub-section would seem to be unnaturally and ungrammatically separated from the words at the commencement of the 349th section, so as to require their mental repetition before the words "For granting bonuses, &c.," to make the latter enactment sensible.

But, correctly speaking, the words at the end of the 349th section, commencing, "But no Municipal Corporation shall," &c., are no more part of the fourth sub-section of the 349th section of the Act of 1866 than of any other of the sections. Their true character is that of a proviso to limit a qualification upon,—or exception from,—the whole section. They are not a *part of*, but a qualification *upon*, the section. When then the Act 34 Vic. declares that "the following sub-section shall be added to section 349," the subsection so added becomes *part of* the section, subject to all its incidents; it is inseparably annexed to a section which is subject to a proviso, and being so annexed, must be subject to the proviso, to which its principal, and that of which it is a part, is subject. The by-law, therefore, here passed, for granting a bonus to a railway, must, to be operative, receive the assent of the electors in the manner required by the Municipal Institutions Act of 1866.

GALT, J., concurred.

Rule absolute to quash by-law, with costs.

INSOLVENCY CASES.

(Reported for the CANADA LAW JOURNAL by T. LANGTON, M.A., Student-at-Law.)

GUNN v. ADAMS.

Assignment for the benefit of creditors—Composition deed—Time within which creditors may come in under the deed—Effect of creditors neglecting to sign within the prescribed time—Accession by assent and acquiescence—Statute of Limitations—Practice.

Where a debtor made an assignment to trustees for the benefit of his creditors, providing by the terms of the instrument that the benefits conferred by it should be confined to those creditors who should execute it within one year, or notify the trustees in writing of their assent to it; and where one creditor had been aware of the terms of the deed, and had neglected to sign it, but had notified one of the trustees of his assent; and where another creditor had not been aware of the deed, but had taken no proceedings hostile to it, and had given his assent to it when it came to his knowledge; and where another, though aware of the deed and its provisions, had neither executed it nor notified the trustees of his assent to it, but had never acted contrary, or taken proceedings hostile, to it.

Held, that they were entitled to come in and prove their claims equally with those creditors who had executed the deed in accordance with its terms, although they had allowed more than ten years to elapse.

Objection being made to the application being made by petition in Chambers, and not by a separate suit.

Held, that it was properly made in Chambers by petition in the original suit.

The Statute of Limitations being urged against the admission of the claims.

Held, that the relation of trustee and *cestui que trust* had been established between the assignees and the creditors who had acquiesced in the deed, as well as those who had actually executed it, and that therefore the statute was inoperative. There was also the additional reason in two cases that the statute had never begun to run owing to the creditors' right of action having arisen after the debtor had absconded.

[Chancery Chambers, April 16th, 1872.—*Mr. Taylor.*]

This suit was brought for the purpose of carrying into execution, under the decree of the Court,

the trusts of a deed of composition and discharge and an assignment made in Nov., 1859, by one Pomeroy of all his estate and effects to the defendants, the trustees, for the benefit of his creditors generally. A decree was pronounced in June, 1871, referring it to the Master to inquire who were the creditors of Pomeroy, whose debts were provided for by the deed, and directing a division of what remained, after payment of costs, rateably among the creditors of Pomeroy, who should have become parties to the deed within one year from its date or in writing notified the trustees of their intention to become parties. Shortly after making this deed Pomeroy absconded.

Two of the creditors, whose claims had been rejected by the Master in consequence of their not having complied with the terms of the deed in February, 1872, presented their petitions to be allowed to come in, and prove their claims in the Master's office. The petitioner Hardy at the time had been aware of an assignment having been made, but not of the terms of the deed. Within a year, however, he had assented to it, and gave a notice to one of the trustees, though whether in writing or not was doubtful, but he had never complied strictly with its terms. The petitioner Johnson, living in an out of the way place, and taking in no newspaper, had never heard of the deed, nor seen the published notice of it until he had filed his claim in the Master's office under the decree, and he then gave his assent. He had never taken proceedings to enforce his claim, nor in any way acted contrary to the provisions of the deed.

W. G. P. Crassels, for the creditors who had acceded to the terms of the deed, opposed the application, and read affidavits as to the registration of the deed, and publication of notice of it with a view to proving a notice of its terms, which would be binding upon all creditors.

C. Moss, for the petitioners, said that it had been argued that the registration of the deed was notice of its provisions to all creditors, but this was not, he contended, the effect of the Registry laws. Their effect was to constitute registration notice to any one afterwards dealing with these lands, but that it was notice to all the world had never been held. The question of notice had been brought forward to shew that Johnson was debarred from proving his claim by the fact of an advertisement of the deed having been published eighty-two times in a newspaper. He thought it was necessary for such a contention to shew that the person against whom it was desired to prove notice, took in the particular newspaper. There was an analogy in the decisions as to dissolutions of partnerships. There an advertisement of the dissolution was not notice to any one not taking in the newspaper. *Bondell v. Drummond*, 11 East 142; *Leeson v. Holt*, 1 Stark 186; *Jenkins v. Blizard*, 1 Stark 420. And an advertisement in this country to constitute notice to all the world must be inserted in the *Gazette*. The facts of Johnson's not having been aware of the trusts of the deed until after decree pronounced of his never having acted contrary to his provisions, and of his willingness to assent to its terms when made known to him entitled him to share in the privileges of it. In the case of *Whitmore v. Tarquand*, 1 Johns & Hem. 444, where the question was whether certain persons