

damage had been made good, &c., and on 18th Jan., 1873, the adjustment of loss, with proof, &c., were furnished to the broker for the underwriters.

On 28th October, 1872, defendant made a voluntary assignment under the Insolvent Act of 1869, and obtained his discharge under section 105 on 19th January, 1874. The schedule prepared at first meeting of creditors did not include plaintiff's name, nor was his claim included in any supplementary schedule furnished the assignee until about 10th March, 1874, when plaintiff's name was furnished to assignee in time to entitle plaintiff to obtain same dividend as those in original list. Plaintiff was notified to file his claim, but declined to do so, and sued defendant for the full amount.

*Held*, That at the time of defendant's assignment, the liability to plaintiff was not a debt payable upon a contingency, but a mere contingent liability which was not capable of being proved, and therefore that the discharge was no bar to the plaintiff's action.

[Pugsley's Rep. II. 503.—Feb. 1875.]

Special case :—

The defendants underwrote in favour of plaintiff a policy of insurance upon the ship "Virginia" (of which plaintiff was part owner) on a voyage from Antwerp to a port in the United States; the loss, if any, to be paid in sixty days after proof of loss and adjustment, and proof of interest being presented at the office of the broker of the underwriters; but no partial loss or particular average to be paid unless it should amount to five per cent. on the valuation, \$20,000.

In a gale on the 15th October, 1872, at 11 p.m., while on the voyage, the ship "was beached" for the general safety. Efforts were made between the 18th and 30th October to get her off. She was finally hove off and brought to anchor in Brixham Roads on the 30th October. On the 31st October they succeeded in towing her to an anchorage inside Torquay Breakwater. She remained there from 1st to 9th November, during nearly all of which time the gale continued. On the 9th November she was towed to Plymouth and placed in the Great Western Dock, and her bottom examined by a diver. On the 14th November she was hauled into dry dock. On the 16th surveyors proceeded on board, and reported that the vessel had beaten heavily, particularly at the ends: the false keel was gone, and the entire main keel was more or less beaten away; the dove-plates at the after end of the keel were broken, and part of the fore gripe was gone; the metal sheathing was wrinkled and in folds; and much was gone from the starboard bilges; the bottom in general was strained and shaken; the windlass was damaged, and great injury was done to the warps, being overstrained and parted, and much of the running rigging was cut and destroyed;

various screw eye bolts had been fixed to the side to assist in floating the vessel from her position, and sundry cordage had been expended for the same purpose. The captain reported that 130 fathoms 1 7-8 inch chain, and a bower anchor, were lost at the time of the accident. The surveyors recommended that the metal sheathing should be stripped; that the entire main keel should be replaced, and in addition to repairing and replacing all the other damages and losses, that the vessel should be caulked from the keel to the wales, and metalled in felt. On the 3rd December the vessel was hauled out of the dry dock.

On the 12th December the surveyors reported all the damages and losses enumerated in the previous survey had been made good, and that the anchor and chains had been saved.

The adjustment of the loss was made up on the 27th December, at Liverpool, G. B., and was furnished with proof of interest, and all other necessary preliminary proofs to the broker for the underwriters on the 18th January, 1873.

On the 28th October, 1872, the defendant Harrison made a voluntary assignment under the Insolvent Act of 1869.

All necessary notices having been given, meetings held, and steps taken to wind up the estate, and the assignee having sold all the estate of the insolvent, he, on the 19th January, 1874, obtained his discharge under the 105th section of the Act. The defendant Turner assigned on the 26th October, and subsequently obtained a deed of composition and discharge.

The schedule prepared under section 3, exhibited at the first meeting of creditors, did not include the name of the plaintiff.

The plaintiff's claims were not included in any supplementary schedule furnished the assignees until on or about the 10th March, 1874, after the writs in these cases were issued, when the plaintiff's name, with those of other creditors, was furnished to the assignees, in time to entitle the plaintiff and the other creditors named in the supplementary list, to obtain the same dividend as those in the original list, if the assignees were authorised under the Acts after one dividend declared and paid, to make a dividend to those subsequently coming in equal, there being still sufficient assets in the hands of the assignees for that purpose.

On receipt of the supplementary list, the assignees notified the plaintiff to file his claims, in order that he might participate in the dividends of the estates; but the plaintiff did not do so. In Turner's case the dividend was offered to the plaintiff by the insolvent prior