shewn by which partner of the firm, add whether under power of attorney or otherwise.

5. Thomas was not a duly appointed assignee, not being appointed by a duly qualified board of trade

6. It was only shewn that three or four creditors proved their claims before the official assignee, and that is not sufficiently proven.

7. As to the plea of payment of money into court, the amount paid in does not cover the interest, but only the face of the note, and therefore defendants must fail.

The learned judge called the attention of the parties to the fact that the pleas were in bar of the action, and not to its further maintenance, as they should have been, the deed having been executed by the defendants after the commencement of this suit. He, however, gave leave to amend by putting the pleas right as to this point if necessary.

He disposed of the case without a jury, and decided in favor of the defendants, reserving to the plaintiff leave to move to enter a verdict for him for such amount as the court might think fit, if of opinion he was entitled to succeed in the suit. He added, he would do what he could to maintain the arrangement, but there were grave questions which required consideration.

In Easter Term, 1869, *K. Mackenzie*, Q. C., obtained a rule *nisi*, pursuant to the leave reserved, to enter a verdict for the plaintiff for $155.69, or such other amount as the court might think the plaintiff entitled to, on the grounds taken at the trial, and on the ground that on the evidence the verdict should have been entered for the plaintiff for the said sum, or some other sum; or for a new trial, the verdict being contrary to law and evidence.

In the same term *Wallbridge*, Q C., shewed cause. Under section 9 of the Insolvent Act of 1864 the deed binds all the creditors of the insolvents. There were no individual creditors. The plea shews it, and it was so proved at the trial: *Bamford* v. *Clewes*, L R. 3 Q B. 729. As to the executing creditors signing in the names of their firms, they not only sign the instrument but have received the composition under it, and therefore are bound by it, and no one else can raise the objection now. *Bloomley* v. *Grinton et al.*, 9 U. C. Q. B. 455, is an authority establishing this point. As to Thomas's authority as assignee, the plaintiff proved his debt before him, and elected to prove under the commission, and cannot now deny the authority of the assignee, or proceed in this action: *Elder* v, *Beaumont*, 8 E. & B. 353; *Newton* v. *Ontario Bank*, 13 Grant 652; s. c. in Appeal, 15 Grant 283. The plaintiffs by taking issue on the plea generally merely put in issue the execution of the deed, and not the performance of all conditions precedent: *Bramble* v. *Moss*, L. R. 3 C. P. 461. It is sufficient to shew that the deed is executed by the proper number of creditors representing the proper amount of debts, and it is of no consequence whether they prove their claims before the assignee or not. As to the amount paid into court, the note was 5s. more than the plaintiff was entitled to under the composition arrangement. He cited *Wright* v. *Jelley*, L. R. 4 Ex. 9; *Rixon* v. *Emary*, L. R. 3 C. P. 546; *In re Holt and Gray*, 18 Grant, 568; *McNaught* v. *Russell*, 1 H. & N. 611; the judgment in this court when the allowance of the discharge of these defendants was set aside, 28 U. C. Q. B. 266; *Clapham* v. *Atkinson*, 4 B. & S. 722; *Dingwall* v. *Edwards*, 4 B. & S. 738; *Hodgson* v. *Wightman*, 1 H. & C. 810.

K Mackenzie, Q C., and *Henderson* (of Belleville) contra. The deed of composition and discharge was signed by defendants after it was filed, only about three weeks before the trial, without any leave or authority from the County Judge to make the amendment.

Sub-sec. 2 of sec. 9 of the Act of 1864 contemplates the deposit of the deed with the assignee after it has been duly executed. Sub-sec. 6 authorizes the filing of the deed with the clerk of the court, and an application for its confirmation, after giving notice. It must be filed so that the creditors may have access to. The statute contemplates notice to be given and steps taken within a certain time after filing, or after the deed has been duly executed. Now when was this deed duly executed, and as a duly executed deed has it ever been filed? There has been a material alteration of the deed after it was filed Under this English Act this would avoid the deed: *Seilin* v. *Price*, L. R. 2 Ex. 189. *Wood* v. *Slack*, L. R. 3 Q. B. 379, merely decides that where the deed when registered was a valid instrument, adding two names to the schedule would not make it void. The second and third grounds of objection seem concluded by the judgment already given by this Court in disallowing the discharge of the defendants by the County Judge of Hastings, and the following authorities: *Rixon* v. *Emary et al.*, L. R. 3 C. P. 546; *Ex parte Glen, In re Glen*, L. R. 2 Ch. App. 670; *Tomlin et al.* v. *Dutton*, L. R. 2 Q. B 466; *European Central R. W. Co.* v. *Westall*, L. R. 1 Q B. 164; *Steiglitz* v. *Eggington*, Holt N. P. C. 141. The extract from the evidence given before the commissioner, and filed on the trial, shews there were separate debts. There were only sixteen names to the deed representing debts over $100. Five of these names are signed by procuration. Being a deed each one must execute it under seal: *Steiglitz* v. *Eggington*, Holt N. P. C. 191. The five persons executing without authority reduces the number to eleven.

The plaintiff could not appeal until he proved his debt, and the deed of composition and discharge was not entered into until after the assignment. His proving under the commission is no bar to this action: *Harley* v. *Greenwood*, 5 B. & Al. 103. The payment into Court is not sufficient. It should include the interest down to the time of paying into Court: *Kidd* v. *Walker*, 2 B. & Ad. 705.

RICHARDS, C.J.—The deed of composition and discharge is set out in the judgment of Mr. Justice Wilson in the matter of the insolvency, when it was before this Court, 28 U. C. Q. B. 266. It seems only to refer to the debts of the insolvents, and not in any way to their individual debts and creditors, if they have any. The authorities referred to shew this is the effect of the deed, and that it does not bind non-assenting creditors of the partnership or of the individual partners only This seems to be the view entertained by Mr. Justice Wilson in the judgment referred to.

It is contended that both defendants had individual liabilities. Williamson, in his evidence before the Judge in the Insolvent Court, which