who was solicitor to the petitioning creditor, was held to be not sufficient for annulling the adjudication; and in the absence of any rule of practice I must hold the 25th section of the amendment Act of 1865 has been sufficiently complied with here.

I do not think it necessary, at present, to go into the other grounds taken on the petition, as to the existence of a sufficient debt whereon to ground a fiat for attachment so as to constitute the plaintiff a creditor of the defendants, because it would take up more time than I have at my disposal. I will, however, say that I have very strong doubts as to whether a person who is a surety, as this plaintiff was, can legally go and pay up a promissory note before it is due, for the purpose of adopting proceedings in insolvency, and claim to be a creditor of the defendant, as this plaintiff has done. He might, perhaps, upon a regular transfer of a negotiable note, on which he is endorser, but I doubt if he could where he is merely the joint maker with the defendants, as their surety. (See *Ex parte Brown*, 1 D. M. & G., 461, and *Ex parte Greenstock*, DeGex., 239).

It is therefore ordered that the judge's fiat and the writ of attachment be set aside and quashed, and that all proceedings under it be also set aside and annulled, with costs.

ENGLISH REPORTS.

CHANCERY.

Thexton v. Edmondston.

Practice—15 & 16 Vict. c. 86, s. 36—Discovery of material witness after evidence closed.

A specific legatee of chattels, plaintiff in an administration suit, discovered, after the evidence had been closed in the suit, a witness who could give material evidence that the testator at the time of his death possessed certain articles within the terms of the specific bequest, the existence of which was denied by the defendants.

Held, that the evidence was not admissible.

Summary of the classes of cases in which the Court allows further evidence to be received.

[M. R., March 12, 1868, 16 W. R. 833.]

This was an application under section 38 of the Act 15 & 16 Vict. c. 85, for leave to put in further evidence after the time fixed for closing the evidence had expired. The suit was one for administration, the plaintiff being a residuary legatee of certain personal chattels, and the evidence had been closed on the 11th January.

The plaintiff's solicitor now deposed that on the 10th February one of the parties interested in the estate to be administered in the suit called on him to inquire when the assets would be distributed, and in course of conversation gave him the names of persons who it was believed would be able to give important evidence that the testator in the pleadings mentioned possessed at time of his death valuable articles of silver, plate, and other jewellery which had not been delivered over to the plaintiff as directed by the testator's will, and which the defendant denied the testator to have possessed at the time of his death; that since the 10th February he had applied to one of the parties named who could give most material and important evidence on the question, and had also given him information which would, as he believed, lead to his obtaining a further affidavit from another witness on the same subject, and that he had no means of knowing the aforesaid evidence was obtainable until the said 10th February, nor, as he verily believed, had the plaintiff, or his country solicitor, until informed by the deponent, and that in his judgment and belief it was material and necessary in support of the plaintiff's case, on the above question, that he should be permitted to give further evidence of the plate and jewellery possessed by the testator at the time of his death.

W. Pearson, in support of the application, referred to *Watson* v. *Cleaver*, 2 W. R. 265, 20 Beav. 137; *Douglas* v. *Archbutt*, 5 W. R. 393, 23 Beav. 293; *Scott* v. *The Corporation of Liverpool*, 5 W. R. 669, D. & J. 369; *Boyse* v. *Colclough*, 3 W. R. S, 1 K. & J. 127; and *Hope* v. *Threlfall*, 2 W. R. 4, 1 Sm. & G. App. 21. In an unreported case *Price* v. *Bostock* (V. C. W., 27th May, 1858), an extension of time for one month was given to the defendant for filing affidavits in reply, the plaintiff having given evidence of material facts not averred in his bill; and in *Smith* v. *Meadows* (V. C. K., 9th June, 1864), also unreported, evidence was allowed to be given by the plaintiff of acts showing that if the defendant had not executed a deed in question she was at all events bound by it. Here the defendants deny the existence of certain chattels. We, after the evidence has been closed, discover a person who knows material facts about them, and from whom we had no reason to suspect any evidence could have been obtained.

North, for the defendants, was not called on.

Lord Romilly, M. R.—I cannot grant this application. The only grounds on which I have allowed evidence in a cause to be given after the time for closing the evidence had expired are, (1) where one of the parties swears that he has not seen the evidence on the other side, and comes within a reasonable time; (2) where, on the evidence, a new issue arises, not raised by the pleadings, but very material to the question to be decided, the point being, however, reserved whether the further evidence can, in such a case, be introduced; (3) where the character of a witness is impugned, when the witness is allowed to meet the charge; and (4) where, after the evidence has been closed, new facts have happened. The present application cannot be supported upon any of these grounds, and must be dismissed with costs.

QUEEN'S BENCH.

Rowe v. Hopwood.

Infant, contract with—Ratification by, after coming of age—9 Geo. IV., c. 14, s. 5.

Goods were supplied to an infant who, after he came of age, signed, at the foot of an account containing the items and prices, the following memorandum:—"I certify that this account is correct and satisfactory."

Held, that this was no more than an admission of the correctness of the items and charges, and did not amount to a ratification, on which the defendant could be charged under 9 Geo. IV., c. 14, s. 5.

[W. R., Nov. 14, 1868.]

This was an action tried at the last assizes at Cambridge, before the Lord Chief Justice. The action was for goods sold and delivered, being wine supplied to the defendant. There was a