

C. L. Cham.]

IN THE MATTER OF ROBERT R. WADDELL, AN INSOLVENT.

[C. L. Cham.]

case of a voluntary assignment, under sec. 2, a meeting must be called, of which notices must be sent to the creditors, though the special object of the meeting is stated; sub-sec. 2 of that section assumes that notice is sent to creditors under the general provisions of the Act, and requires a list of creditors to be sent with it. The last part of sec. 11 requiring notices to be sent to creditors, applies in my opinion, to every case where notice is required to be given; and as the notices have not been given in this case, I cannot entertain the insolvent's petition for his discharge."

From this judgment, the insolvent (at the suggestion of the learned Judge himself,) appealed by petition entitled in the Court of Queen's Bench, to the presiding Judge in Chambers under sec. 7 of the Insolvent Act of 1864.

The petition was as follows:—

"The petition of Robert Russell Waddell, of &c., sheweth,

1. That your petition on the 27th April, 1865, made an assignment under the Insolvent Act of 1864, and surrendered all his estate, both real and personal to John Murray, of the city of Hamilton, an official assignee.

2. That the said John Murray has since died, and William Forest Findlay, of &c., has been appointed and acts in his place, &c.

3. All proceedings in said matter of insolvency of your petition have been carried on in the County Court of the County of Wentworth.

4. That more than one year had elapsed from the date of your petitioner's said assignment, and his application by petition to the judge of the said County Court of the County of Wentworth for an order allowing and confirming your petitioner's discharge, under the Insolvent Act of 1864 (a copy of this petition was annexed).

5. Your petitioner, on the 23rd June, 1866, by petition, setting forth that your petitioner having duly assigned and surrendered, and in all things conformed himself to the statutes, rules, and orders relating to bankruptcy, and having been duly examined under oath, touching his estate and effects, made his application to Alex. Logie, Esq., judge of the said County of Wentworth, for an order allowing and confirming his discharge under said Act.

6. That his honor, the said judge, refused your petitioner's said application, on the grounds set forth and declared in his said judgment given therein (a copy of which was annexed)

7. Your petitioner being dissatisfied with the determination and decision of the said judge of the County Court of Wentworth, gave due notice of his intention to appeal therefrom to this honorable court, or to the presiding judge in chambers.

8. That your petitioner applied to the presiding judge in chambers on the 11th July, 1866, for leave to appeal from the decision of the judge of the County Court of Wentworth, and by an order made in chambers, bearing date the 11th July, 1866, by his lordship the hon. Mr. Chief Justice Draper, it was ordered that your petitioner should be allowed to appeal from the decision of the judge, dated July 4, 1866, upon giving the required securities, and otherwise complying with the provisions in that behalf contained in the Insolvent Act of 1864.

9. Your petitioner hath given the security required under the said Act, as approved of by the said judge of the County Court of Wentworth, and otherwise complied with the provisions in that behalf, as directed by the said order of his lordship, Mr. Chief Justice Draper.

Your petitioner therefore prays:—

1. That the said judgment or decision of Alex. Logie, Esq., judge, &c., may be revised by this honorable court, or the presiding judge in chambers to whom this petition may be presented.

2. That your petitioner may have such further and other ordered relief as the circumstances of the case may require

3. That the respondent, Lewis R. Corby, the creditor of your petitioner, opposing his discharge, may be ordered to pay the costs of this appeal.

And your petitioner, &c.

This petition was verified by an affidavit of the insolvent.

Sadler, for the insolvent, the appellant.

S. Richards, Q.C., for the opposing creditor.

No cases were cited on the argument.

DRAPER, C. J.—The question raised on this appeal is in what manner is the notice to be given by an insolvent who has procured a consent from his creditors to his discharge, or has procured the execution by the requisite number of his creditors of a deed of composition and discharge within the meaning of the act to apply to the Judge for a confirmation of such discharge.

The objection on which such an application has been decided adversely to this insolvent is, that no notices were addressed to all his creditors and to the representatives of foreign creditors within this Province, nor were any mailed to them, postage paid, according to the 11th sec., sub-sec. 1 of the Insolvent Act of 1864.

The 6th sub-sec. of sec. 9, points out how the insolvent is to proceed to obtain a confirmation of his discharge, either under a consent or a deed of composition and discharge. It requires, 1st. Filing in the proper office the consent or the deed, 2nd. Giving notice of such filing and of the insolvent's intention to apply on a day named in such notice for a confirmation thereof by the Judge, "and a notice shall be given by advertisement in the *Canada Gazette* for two months, and also for the same period if the application is to be made in Upper Canada, in one newspaper \* \* \* in or nearest the place of residence of the insolvent."

The 11th sec. is to the following effect:—Notice of meetings of creditors and all other notices herein required to be given by advertisement, without special designation of the nature of such notice, shall be so given by publication thereof for two weeks in the *Canada Gazette*; also, in Upper Canada, in one newspaper, in English, published at or nearest to the place where the proceedings are being carried on. \* \* \* And in any case the assignee or person giving such notice, shall also address notices thereof to all creditors and to all representatives of foreign creditors within the Province, and shall mail the same with the postage thereon paid at the time of the insertion of the first advertisement