matter of a distinct petition to impeach the creditor's proof and debt. See *Ex p. Loxly*, Buck. 456, and *Ex. p Whitside*, 1 Rose, 319.

In *Ex p. Alexander*, 1 Deacon & Chitty, 514, in which the creditor petitioned the Court to compel the official assignee to pay his dividend, which the assignee disputed on the ground that the creditor had funds of the estate, Sir G. Rose said: "It appears impossible to contend that an official assignee can remit an *order* for the payment of a dividend. It is unquestionable that before the 39 Geo. III. c. 121 (the first statute which took away the right of action from a debtor against assignees for the recovery of his dividends), a creditor at his own option might bring an action for the recovery of a dividend, or present a petition to the Lord Chancellor, and that it was enough for him to shew the order of the commissioners for the payment of the dividend, the amount of which was considered as so much money had and received to the creditor's use. In an action of assumpsit brought against the assignee it was not competent to him to shew that the debt ought to be expunged. An improvement was made in this branch of the bankrupt law, and now no action will lie against an assignee for a dividend, but all claims of this description were transferred to the jurisdiction of the Lord Chancellor. "The difficulty we have to contend with is, that the resistance is made to the payment by a party who has no right to come into Court to litigate that question. An official assignee is an officer purely ministerial, and the Act of Parliament holds out no pretence for his coming into Court to dispute the payment of a dividend."

The majority of the Court agreed with that view of the case.

It appears to me that the positive enactment that the dividends not objected to "shall be paid," is quite as forceable and binding as a commissioner's order under the Bankruptcy Act in England, and that an assignee having collocated a claim on the dividend sheet duly advertised, his duty is fulfilled, unless the claim is disputed by a creditor when he becomes the arbitrator between the parties; but if the dividend is not objected to, it must be paid.

There was no objection upon which the assignees appointment of the 19th of October to hear the parties could be founded, the claim not having been objected to by a creditor. The plaintiff was not therefore bound to attend upon that appointment. No doubt the $117.50 was due to the plaintiff. It is not necessary to determine now how much should have been ranked as a privileged claim, having determined that the defendant, as assignee, cannot dispute a claim or dividend collocated by himself in a dividend sheet advertized and unobjected to by a creditor.

Judgment for the plaintiff $100 and costs, to be paid in ten days.

Judgment for plaintiff.

ENGLISH REPORTS.

QUEEN'S BENCH.

Playford v. The United Kingdom Electric Telegraph Company.

Contract—Privity—Negligence—Breach of duty, causing damage—Public duty—Private duty.

The receiver of a telegram cannot maintain an action for a mistake which has caused him damage. The person who pays for the transmission of a message is the only one who has a right of action in case he is damnified by the negligence of the company or its servants.

Semble, that where a telegraph company is required by Statute to send messages, and empowered to make a maximum charge, the company imposing such maximum charge is bound to use reasonable care in the transmission of messages, and cannot, by imposing any condition on the sender of a telegram, escape the obligation to use reasonable care, as such a condition would be inconsistent with their statutable duty, and would be also unreasonable.

[Q. B. Nov. 19, 1867—16 W. R. 219.]

This was an action brought by a person to whom a telegram had been sent from one of the stations of the United Kingdom Electric Telegraph Company, and who, in consequence of a mistake in the transmission of it, was so misled that he was damnified.

The 1st count of the declaration stated, that before and at the time of the grievance hereinafter mentioned, the defendants carried on the business, amongst other things, of transmitting and giving effect, by means of the telegraph and apparatus of the defendants and otherwise, to intelligence and messages, for certain hire and reward in that behalf; and the plaintiff, being the owner of a cargo of ice on board a ship lying off Grimsby, Messrs. Rice & Holbyer, of Hull, instructed the defendants, at their office in Hull, to transmit to the plaintiff, to wit, under the name or style of J. Northcote, at his office in London, a telegraphic message, to the purpose and effect that the said Messrs. Rice & Holbyer could give the plaintiff under the said name 23s. per ton for the said cargo then at Grimsby, and, although the defendants, for certain hire and reward paid to them in that behalf, undertook to transmit the said message to the plaintiff, yet the defendants wholly neglected to, and did not transmit the said message, but they transmitted to the plaintiff a message to the effect that the said Messrs. Rice & Holbyer would give the plaintiff 27s. per ton for the said cargo, and the plaintiff thereupon accepted the said supposed offer of 27s. per ton, which was then the market value thereof, and directed the captain of the said ship containing the said cargo to proceed to Hull to be unloaded by the said Messrs. Rice & Holbyer; and, although the said Messrs. Rice & Holbyer refused to pay more than the price they had offered of 23s. per ton, the cargo being of a perishable quality, the plaintiff was compelled to sell the said cargo at Hull aforesaid at the said price of 23s. per ton, which was below the market value thereof, and the plaintiff lost and was deprived of the difference between the market value of the said ice and the price which the said cargo realised, and was put to further losses and expenses, to wit, £— &c., for demurrage and melting of cargo, by reason of the misfeasance of the defendants aforesaid.