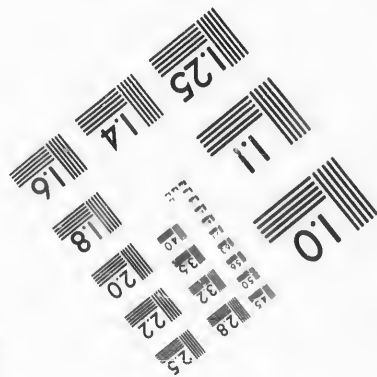
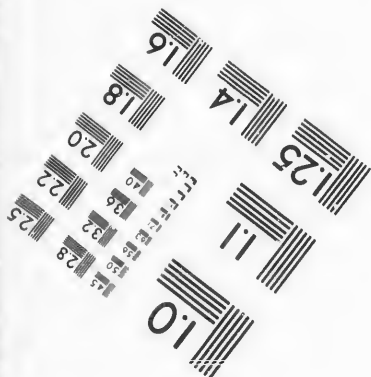
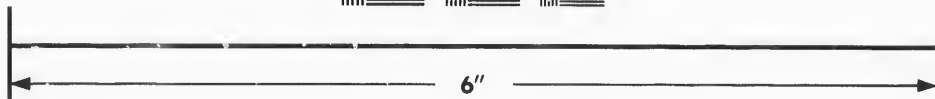
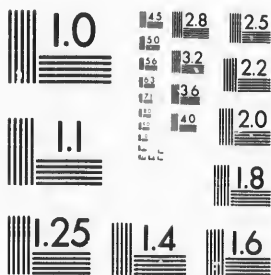


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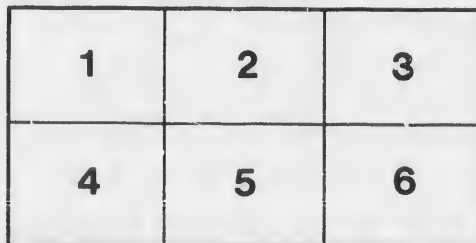
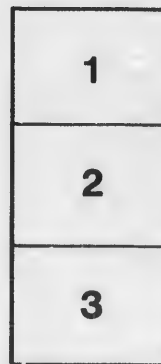
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IN THE
Supreme Court of Nova Scotia.

Appeal from the Decision of Judge W. A. D. Morse, of the County
Court of Cumberland, District No. 5.

WILLIAM C. GREENFIELD, PLAINTIFF,

AND

FREDERICK YORKE, DEFENDANT.

MESSRS. TOWNSHEND & DICKEY,

Attorney for Appellant.

WILLIAM T. PIPES,

Attorney for Respondent.

SACKVILLE, N. B.:

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CUMBERLAND, S. S.
In the County Court at Amherst, 1880. }

CAUSE: { WILLIAM C. GREENFIELD, PLAINTIFF,
 VS.
 FREDERICK YORKE, DEFENDANT.

To the Honorable Sir WILLIAM YOUNG, Knight Chief Justice of the Supreme Court for the Province of Nova Scotia, and the other Judges of the Supreme Court:

I, William A. D. Morse, of Amherst, in the County of Cumberland, Judge of the County Court for District No. 5, beg respectfully to certify as follows:

1. Annexed marked M, is the writ in this cause.
 2. Annexed marked N. N, are the pleas in this cause.
 3. Annexed marked No. 1, with exhibits 2, 3 and 4, annexed thereto, is the Writ of Attachment put in evidence in this cause.
 4. Annexed marked W, A, D, M, and respectively A, B and C, are the minutes of meeting of creditors in the Estate of Slayter and Stewart in evidence in this cause.
 5. Annexed marked D, is the notice of taxation given between Plff. as Official Assignee, and Deft. as attaching Creditor in evidence in this cause.
 6. Annexed marked respectively Nos. 5 and 6, is a letter of date 14th January, 1880, in two parts, from Plff. to Deft. in evidence in this cause.
 7. Annexed marked E, is the Bill of costs taxed by me on which this action was brought.
 8. Annexed marked F, is a letter from Deft. to Plff., of the date of Sept. 21st, 1880, in evidence in this cause.
 9. Annexed marked G, is a memo of property pointed out to the Deputy Sheriff as property of Slayter & Stewart.
 10. Annexed marked H, is the Execution in the case of Ryfkogle vs. Stewart, et al. Insolvents.
 11. Annexed marked I, is the statement of certificate of Plff. as Official Assignee in evidence.
 12. Annexed marked K, are the minutes of evidence in this cause.
 13. Annexed marked L, is the decision in this cause.
 14. Annexed marked M, is the Rule of Appeal in this cause.
- I certify the foregoing to be all the documents, papers, etc., in this cause.

(Signed)

W. A. D. MORSE,
 Judge County Court,
 District No. 5.

SUMMONS. M.

Cumberland, S. S.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and of the United Church of England and Ireland, on Earth the Supreme Head.

{ L B } To the Sheriff of the County of Cumberland or to any other of our Sheriffs. We command you to summon Frederick Yorke, of Parrsboro', in the County of Cumberland, yeoman, to appear in the County Court, at Amherst, within ten days after the service of this Writ, at the suit of William C. Greenfield, who says that the said Defendant is indebted to him for money payable by the Defendant to the Plaintiff for work done by the Plaintiff as Official Assignee under the Insolvent Act of 1875, and Amending Acts, in and for the County of Cumberland, for the Defendant, at his request, and for money paid, laid out and expended by the Plaintiff, as Official Assignee, as aforesaid, for the Defendant, at his request, and for fees payable by the Defendant to the Plaintiff, in respect thereof, which said fees have been taxed and allowed by the Judge of the County Court for Cumberland County, and for goods sold and delivered by the Plaintiff to the Defendant, at his request. And for work done and materials provided by the Plaintiff for the Defendant, at his request. And for money lent and advanced and paid, laid out and expended, by the Plaintiff for the Defendant, at his request. And for money received by the Defendant for the use of the Plaintiff, and for money found to be due from the Defendant to the Plaintiff, on an account stated between them. And for interest upon money of the Plaintiff held by the Defendant and forborne to him by the Plaintiff for a long time now elapsed.

And he claims seventy-five dollars.

Issued this 11th day of September, A. D., 1880.

(Signed)

ARTHUR DAVISON,
 Clerk.

WILLIAM T. PIPES,
 Plaintiff's Attorney.

The following are the particulars of the Plaintiff's claim :

1880, May 31.	To amount of fees taxed by the Judge of the County Court in the cause of Frederick Yorke vs. Slayter & Stewart, Insolvents,.....	\$70.40
	To interest thereon to date of writ,.....	1.20
		<hr/>
80	To amount due under the Common Courts for fees due Plaintiff as within set out.....	\$70.40
	To interest thereon to date of writ,.....	1.20
		<hr/>
	To amount due Plaintiff per settlement and under Common Courts,.....	\$70.40
	To interest thereon to date of writ,.....	1.20
		<hr/>
	WILLIAM T. PIPES, Plaintiff's Attorney.	\$71.60

70 County Court, 1880. }
Cumberland, S. S. }

PLEAS. N.

CAUSE: { WILLIAM C. GREENFIELD, PLAINTIFF,
vs.
FREDERICK YORKE, DEFENDANT.

The Defendant, by J. J. McCabe, his Attorney, hereby appears and gives notice that he intends to defend this action upon the following, among other grounds :

1st. That he never was indebted, as alleged, for money payable for work done by the Plaintiff, as Official Assignee, under the Insolvent Act of 1875, and Amending Acts, in and for the County of Cumberland, for the Defendant, at his request, nor for money paid, laid out, and expended by the Plaintiff, as Official Assignee, as aforesaid, for the Defendant, at his request, nor for fees payable by the Defendant to the Plaintiff, in respect thereof ; and

2nd. The Defendant says that, to the Common Courts, at the Plaintiff's Writ and Declaration, he is not indebted for goods sold, nor for work done, and materials, nor for money lent, nor for money received for Plaintiff's use, nor upon an account stated, nor for interest.

Parrsboro', Sept. 26th, 1880.

J. J. McCABE,
Atty. for Deft.

To Plaintiff for his Attorney.

ADDED PLEAS. N.

90 CUMBERLAND, }
In the County Court, 1880. }

CAUSE: { WILLIAM C. GREENFIELD, PLAINTIFF,
vs.
FREDERICK YORKE, DEFENDANT.

The said Defendant, by J. J. McCabe, his Attorney, for an added plea, by leave of the Court, says :

1st. That under and by virtue of a Writ of Attachment, issued out of the County Court, at Amherst, on the seventh day of January, A. D. 1880, against George M. Slayter and John W. Stewart, of Parrsboro', in the County of Cumberland, Traders, under the Insolvent Act of 1875, and Amending Acts, said Plaintiff, as such Official Assignee for the County of Cumberland, attached a large amount of property belonging to the said Insolvents, to wit : 500 logs, 49,753 feet of deals, 5,820 scantling, and 1,860 feet of boards ; also the books of account of the said Insolvents, showing a large amount of money due them, as appears by the return of the said Plaintiff to the said Writ of Attachment, dated the ninth day of January, aforesaid, and Defendant says that afterwards, by default of Appointment of appointment of a Creditor's Assignee, to the said Estate, by the creditors thereof, or by the Judge of the said Court, the said Plaintiff, by operation of law, became the Assignee to the same, and still is the Assignee thereof, and the Defendant says that the said Plaintiff, being such Creditor's Assignee, has taken no steps whatever to realize money out of the said assets of the said Estate, though repeatedly requested by the Defendant so to do, and the Defendant further says that this action is brought to recover payment from him of Plaintiff's fees, as such Official Assignee, in connection with said Estate of Stewart and Slayter, and that there was and is in his possession more than sufficient property, of that so attached by the said Assignee, to fully pay and discharge his said fees, but that the said Plaintiff hath refused and still refuses to take any steps whatever to realize the said assets, in order to reimburse himself.

110 2. And for a defence upon equitable grounds the Defendant, by his said Attorney, says that under and by virtue of a Writ of Attachment, issued out of the County Court at Amherst, on the seventh day of January, A. D. 1880, against George M. Slayter and John W. Stewart, of Parrsboro', in the County of Cumberland, Traders, under the Insolvent Act of 1875, and Amending Acts, said Plaintiff, as such Official Assignee for the County of Cumberland, attached a large amount of property belonging to the said Insolvents, to wit : 500 logs, 49,753 feet of deals, 5,820 scantling, and 1,860 feet of boards ; also the books of account of the said Insolvents, shewing a large amount of money due them, as appears by the return of the said Plaintiff, to the said Writ of Attachment, dated the ninth day of January, aforesaid, and Defendant says that afterwards, by default of appointment of a Creditor's Assignee to the said Estate, by the creditors thereof, or by the Judge of the said Court, the said Plaintiff, by operation of law, became the Assignee to the same, and still is the Assignee thereof, and Defendant says that the said Plaintiff, being such

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I have, by virtue of this Writ, attached the goods and
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120 Creditor's Assignee, has taken no steps whatever to realize money out of the said assets of the said Estate, though repeatedly requested by the Defendant so to do, and the Defendant further says that this action is brought to recover payment from him of Plaintiff's fees, as such Official Assignee, in connection with said Estate of Stewart and Slayter, and that there was and is in his possession more than sufficient property, of that so attached by the said Assignee, to fully pay and discharge his said fees, but that the said Plaintiff hath refused and still refuses to take any steps whatever to realize the said assets, in order to reimburse himself, and the Defendant prays that the said Plaintiff may be restrained from further prosecuting this action.

And, for a third added plea, Defendant says that as to the sum of fifty-one dollars and forty cents, parcel of the amount claimed in the Plaintiff's particulars, he never was indebted as alleged, and as to the residue of the Plaintiff's claim it is below the jurisdiction of this Honorable Court, and should have been brought before a Justice of the Peace.

130

J. J. McCABE,
Atty. of Deft.

No. 1.

The Insolvent Act of 1875, and Amending Acts.

CANADA,
Province of Nova Scotia, }
County of Cumberland. }

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth.

The the Official Assignee of the County of Cumberland, GREETING :

We command you, at the instance of Frederick Yorke, to attach the Estate and effects, monies and securities for money vouchers, and all the office and business papers and documents, of every nature whatsoever, of, and belonging to George M. Slayter and John W. Stewart, both of Parrsboro', in the County of Cumberland, Traders, if the same shall be found in said County, and the same so attached safely, to hold, keep and detain in your charge and custody until the attachment thereof, which shall be so made under and by virtue of this Writ, shall be determined in due course of law.

We command you also to summon the said George M. Slayter and John W. Stewart to be and appear before us, in our County Court, at Amherst, in said County of Cumberland, on the twenty-second day of January, now, next, ensuing to show cause, if any they have, why their Estates should not be placed in liquidation under "The Insolvent Act of 1875, and Amending Acts," and further to do and receive what, in our said Court, before us, in this behalf, shall be considered, and in what manner you shall have executed this Writ, then and there, certify unto us with your doings thereon, and every of them, and have you then and there also this Writ.

IN WITNESS WHEREOF we have caused the Seal of our said Court to be herunto affixed, at Amherst aforesaid, this seventh day of January, in the year of our Lord one thousand eight hundred and eighty, in the forty-third year of our Reign.

CHARLES R. SMITH,
Plaintiff's Attorney.

(Signed) ARTHUR DAVISON,
Clerk.

I have, by virtue of this Writ, attached the goods and effects of the within named Defendants, George M. Slayter and John W. Stewart, and I have left a true copy of the Writ at each of their last places of abode of the said Defendants, said Slayter and Stewart having absconded from the Province of Nova Scotia and could not be personally served with copies of said Writ by me, and hereto annexed is a report of my doings. Amherst, Cumberland, 9th January, 1880. (Signed) W. C. GREENFIELD, Off. Assg.

140

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No. 2.

Insolvent Act of 1875, and Amending Acts.

160 In the Matter of GEORGE M. SLAYTER and JOHN W. STEWART, Insolvents.

I, W. Clifford Greenfield, of Amherst, in the County of Cumberland, Official Assignee for said County, being duly sworn, depose and say as follows :

1st. That in obedience to the annexed Writ of Attachment, I have attached the Estate and effects of and belonging to the above named Insolvents.

2nd. And I further say that I cannot find the said George M. Slayter and John W. Stewart within the County of Cumberland, or within my jurisdiction, and I have learned after making diligent enquiry that the said Insolvents have absconded from the Province of Nova Scotia. And I have signed.

Sworn before me, at Amherst, this 10th day of February, A. D., 1880.

(Signed) W. C. GREENFIELD.

170

(Signed) ARTHUR DAVISON,
A Commissioner of Supreme Court
for County of Cumberland.

No. 3.

Insolvent Act of 1875, and Amending Acts.

CANADA,
Province of Nova Scotia, }
County of Cumberland. }

REPORT OF OFFICIAL ASSIGNEE.

In the Matter of GEORGE M. SLAYTER and JOHN W. STEWART, Insolvents.

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W. Clifford Greenfield, of Amherst, in the County of Cumberland, Official Assignee of said County, maketh 180 out and saith, that by virtue of a Writ of Attachment, at the instance of Frederick Yorke, the above named Insolvents, I have attached the goods and effects of the said George M. Slayter and John W. Stewart, an Inventory whereof, together with the manner in which the said Writ was executed, is also hereto annexed, and I do hereby, in conformity with the said Act, make my return and report.

Sworn to at Amherst, this 14th day of }
 January, A. D., 1880. Before me, }

(Signed) ARCHER DAVISON,
 Commissioner for taking Affidavits
 in County Court.

(Signed) W. C. GREENFIELD,
 Official Assignee.

No. 4. INVENTORY.

190

Insolvent Act of 1875, and Amending Acts.

In the Matter of GEORGE M. SLAYTER and JOHN W. STEWART, of Parrsboro', in the County of Cumberland, Insolvents.

Logs, deals, and lumber attached by me, at Parrsboro', on January 8th, A. D., 1880, as follows:

Logs in the mill pond and also in the civer, the same as taken under Execution, by Deputy Sheriff Fraser, what-over quantity there may be; 500 logs at the foot of Slayter's launchway, also deals and scuttling on Captain Ryfkogle's wharf and lumber yard, as follows:

49,753 feet deals,
 5,820 " scuttling,
 1,860 " yards.

57,433 feet. Also one Account Book.

200

Dated at Amherst, in the County of Cumberland, this 9th day of January, A. D., 1880.

(Signed) W. C. GREENFIELD,
 Official Assignee.

W. A. D. M.-A.

Insolvent Act of 1875, and Amending Acts.

In the Matter of GEORGE M. SLAYTER and JOHN W. STEWART, Insolvents.

First meeting of creditors held at Parrsboro', at the store of F. Yorke, on Thursday, the twenty-fifth day of March instant, pursuant to notice published in the *Maritime Sentinel* newspaper, and notices prepaid and registered to the creditors, according to Section twenty-one of the said Insolvent Acts and Amendments.

210 Moved by Dr. A. S. Townshend and seconded by Frederick Yorke, and passed, that Jonathan Stickney be chairman of this meeting. A. S. Townshend filed power of Attorney from J. Medley Townshend to represent Gilbert Seaman at meeting, also power of Attorney by J. Stickney. Claims filed:

R. L. Ryfkogle, by J. Stickney \$1,646.90
 Gilbert Seaman, by A. S. Townshend 258.30

Moved by A. S. Townshend and seconded by Jonathan Stickney, that this meeting be adjourned until Friday, the thirtieth day of April next, at the hour of two o'clock p. m., at Parrsboro'.

JONATHAN STICKNEY,
 Chairman.

W. C. GREENFIELD,
 Official Assignee.

W. A. D. M.-B.

Insolvent Act of 1875, and Amending Acts.

220

In the Matter of GEORGE M. SLAYTER and JOHN W. STEWART, of Parrsboro', in the County of Cumberland, Insolvents.

Meeting of creditors held, pursuant to adjournment, at the office of Capt. R. L. Ryfkogle, at Parrsboro', this thirtieth day of April, A. D., 1880.

Moved by Frederick Yorke and seconded by Jonathan Vickery, that Capt. Ryfkogle be chairman of the meeting. Passed unanimously. Claims filed as follows:

Frederick Yorke, by self \$225.00
 Jonathan Vickery, by self 121.89
 D. J. Taylor, by self 62.41
 Harry W. Stewart, by A. W. Gow 234.22
 Herbert Hughes 25.69

230

Moved by A. W. Gow and seconded by J. A. Vickery, and passed, that Doctor Clarke be requested to act as Creditor's Assignee of this Estate.

Moved by J. A. Vickery and seconded by A. W. Gow, that D. J. Taylor be one of the Inspectors of the Estate.

Passed.

Moved by F. Yorke and seconded by J. A. Vickery, that Capt. Ryfkogle be an Inspector of the Estate. Passed.

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Moved by J. A. Vickery and seconded by D. J. Taylor, that the meeting be adjourned till 7 o'clock this evening at this (Capt. Ryfkogle's) office. Passed.

W. C. GREENFIELD,
Official Assignee.

240

W. A. D. M.-C.

Insolvent Act of 1875, and Amending Acts.

In the Matter of GEORGE M. SLAYTER and JOHN W. STEWART, Insolvents.

Creditors met, pursuant to adjournment, at 7 o'clock p. m., on April 30th. 1880.

J. A. Vickery stated that T^r. Clarke would accept the position of Assignee of the Estate, but was not present at the meeting.

Moved by A. W. Gow and seconded by Frederick Yorke, that the amount of Bonds to be given by the Assignee shall be one thousand dollars. Passed. On motion meeting adjourned.

W. C. GREENFIELD,
Official Assignee.

250

W. A. D. M.-D.

Insolvent Act of 1875, and Amending Acts.

CUMBERLAND,
In the County Court, 1880. }

CAUSE: { FREDERICK YORKE, PLAINTIFF,
VS.
JOHN W. STEWART and } DEFENDANTS.
GEORGE M. SLAYTER, }

Take notice of taxation of costs herein before the Judge of this Honorable Court, in the Court House, in Amherst, on the 17th day of July, inst., A. D., 1880, at 10 o'clock in the forenoon, being as between myself, as Assignee of said Defendants, and you, as Attaching Creditor.

Dated at Amherst, this 10th day of July, 1880.

W. C. GREENFIELD,
Official Assignee of said Defendants.

To the Plaintiff or his Attorney.

W. A. D. M.-Nos. 5 and 6.

AMHERST, N. S., January 14th, 1880.

F. YORKE, Esq., Parrsboro'.

Dear Sir:—Yours of 12th inst. received. Thanks for the list of liabilities. Do you suppose there is any danger of the lumber on Ryfkogle's wharf being removed or sent away on train? It is not likely to be shipped by water till spring, but what do you say to the probability of Ryfkogle sending it away on the rail road; but I should not think they would undertake to do that. Still you cannot tell; you had better keep on the look out. I am not in a position to look after the lumber. I therefore give you authority to have a general oversight of said Estate, and whatever trouble or expense you are to, can be settled at the first meeting of the creditors. Sickney will not likely do anything till Ryfkogle's return; then the first thing Ryfkogle will have to do will be to establish his claim to the property attached, or allow the business to go on by the creditors. Let me know anything in reference to the Estate that you consider necessary for me to know.

I am yours very truly,

W. C. GREENFIELD,
Official Assignee.

280

W. A. D. M.-E.

Insolvent Act of 1875, and Amending Acts.

Re STEWART and SLAYTER, Insolvents.

Mr. FREDERICK YORKE, Plif.

To W. C. GREENFIELD, Dr.

1880.

Jan'y. 8th.	\$2.00.	To travel and expenses to Parrsboro'.....	\$12.00
		“ attachment \$1.00, service \$1.40.....	2.40
		“ receipt 30c, affidavit \$1.00.....	1.30
		“ Inventory \$2.00, paid commission 20c.....	2.20
		“ certificate \$1.00, return \$1.00.....	2.00
		“ paid “Royal Gazette” \$1.00.....	1.00
		“ paid “Maritime Sentinel” \$1.00.....	1.00
March 3rd.		“ certificate to C. R. Smith.....	1.00
		“ paid “Maritime Sentinel” for notice of meeting.....	2.00
6th.		“ paid do. notice to creditors.....	2.00
		“ postage and stationery.....	2.00
16th.		“ postal cards for adjournment.....	25
18th.	2.00.	“ travel and expenses to Parrsboro'.....	12.00
25th.		“ travel, expenses and attendance at the first meeting of creditors at Parrsboro', and keeping minutes of meeting.....	15.00

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300 April 15th.	" postage	113.00
30th. 113.00.	" custody of Estate, 113 days at \$1.00 per day	15.00
	" travel and expenses to Parrsboro', and attendance at meeting of creditors and keep- ing minutes of meeting.	3.00
May 12th.	" advertising notice.	187.40
		117.00
		\$ 70.40

Amherst, N. S., May 31st, 1880.

(Signed) W. A. D. MORSE.

W. A. D. M.-F.

PARRSBORO', Sept. 21st, 1880.

310

W. C. GREENFIELD, Esq.

Dear Sir:—A meeting of the creditors of the Insolvents Slayter and Stewart was held at the office of Frederick Yorke on Monday evening. G. F. Hill, Esq., was appointed chairman, and Frederick Yorke secretary.

It was moved by Frederick Yorke and seconded by George F. Corbett, that Mr. Greenfield be directed to sell the property attached by him in above insolvency forthwith, subject to any claim Capt. Ryfkogle may pretend to have or may have on said property, and to take all his pay of fees, as Assignee, out of proceeds of said Sale, which motion was unanimously carried.

FREDERICK YORKE, Secy.

I may add the meeting consisted of all the principal Creditors of Slayter and Stewart, in Parrsboro', except D. J. Taylor, who was in the ship and could not come, but stated he wished Mr. Greenfield to sell the property, and Capt. Ryfkogle who was not invited to attend. The logs in the pond are liable to go adrift at any freshet and should be sawed at once. You will therefore please sell by a Deputy to save expense or yourself at once. A party stated he would buy the property attached by you subject to claims of Capt. Ryfkogle and pay all your fees.

Please drop a line on receipt stating what you will do, and oblige,

FREDERICK YORKE.

W. A. D. M.-G.

MEMO.

M. Ryfkogle and others vs. Slayter and Stewart.

1879.

330 Levied 16th Dec.:

1,500 spruce logs.
300 spruce logs in the river.
30 M. feet deals, boards and scantling.
2 cook stoves.
3 tables.
12 chairs.
4 bedsteads and bedding.
2 clocks.
1 cow, crockeryware.
 $\frac{1}{2}$ ton hay.

W. A. D. M.-H.

340

Cumberland, S. S.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and of the United Church of England and Ireland, on Earth the Supreme Head.

To the Sheriff of our County of Cumberland or to any other of any other of our Sheriffs:

{ L. S. } Whereas Roger L. Ryfkogle, hereinafter called the Plaintiff, by consideration of our Justices of our Supreme Court, at Amherst, on the eight day of December, 1879, recovered Judgement against John Stewart and George F. Slayter, hereinafter called Defendants, for the sum of sixteen hundred dollars, debt or damage, and the sum of eighteen dollars, costs of suits, as appears to us of Record, whereof execution remains to be done. We command you therefore, that of the Goods, Chattels, Lands, or Tenements of the said Defendants, within your precinct, you cause to be paid and satisfied unto the said Plaintiff, at the value thereof in money, the aforesaid sums being sixteen hundred and eighteen dollars, and thereof also to satisfy yourself for your own fees; and for want of the Goods, Chattels, Lands, or Tenements of the said Defendants, to be by them shown unto you, or found within your precinct, to the acceptance of the said Plaintiff, to satisfy the sums aforesaid. We command you to take the bodies of the said Defendants and commit unto our Gaol, in Amherst, and detain in your custody, within our said Gaol, until they pay the full sums above mentioned, with your fees, or that they be discharged by the said Plaintiff, the creditor or otherwise, according to law. Whereof fail not, and make due return of this Writ unto our said Supreme Court, at Amherst, within sixty days from issuing hereof.

Issued on December 10th, A. D., 1879.

(Signed)

E. B. BLENKHORN,
Frothy.

J. MEDLEY TOWNSHEND,
Plaintiff's Attorney.

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Received 20th December, 1879, 10 1/2 o'clock, A. M. R. McLean, Sheriff.

I levied on a quantity of logs and deals. Subsequently the Defendants were placed in Insolvency. My levy existing at the times, and afterwards, my fees not being paid, I sold a portion of the property to pay the same.

R. McLEAN, Sheriff.

Supreme Court.

RYFKOGLE, }
vs. } EXECUTION.
STEWART, ET AL }

Levy. personal property of Defendants for full amount, this Execution certificate and your own fees.

J. MEDLEY TOWNSHEND.

370

I. W. A. D. M.

Cumberland, S. S. }
CANADA. }

Insolvent Act of 1875, and Amending Acts.

{ FREDERICK YORKE, PLAINTIFF,
vs.
In the Matter of { JOHN W. STEWART and } DEFENDANTS.
{ GEORGE M. SLAYTER, }

380 I, W. Clifford Greenfield, of Amherst, in said County, Official Assignee, in our said County, hereby state that all the creditors of the above named Defendants, so far as I am aware, reside in Parrsboro', in said County of Cumberland, and that said Defendants carried on their business at said Parrsboro'.

I say that so far as I am personally concerned, I am perfectly willing to hold the meeting of creditors, at Parrsboro', if so ordered and directed, as it is the wish of the said creditors that the meeting should be held there, and further it would be very much less expense for them to have the meeting there than at Amherst.

Dated at Amherst the 3rd March, A. D., 1880.

(Signed) W. C. GREENFIELD,
Assignee.

K.

390

GREENFIELD }
vs. }
YORKE. }

Tried November, 1880.

Mr. Pipes, for Plaintiff.

Mr. Townshend, for Defendants.

W. C. Greenfield called and sworn:—Am Plaintiff. Reside in Amherst. Was Official Assignee for County of Cumberland. Defendant came to me about first of January, to my office. Defendant lives in Parrsboro'. He wanted to put Slayter and Stewart into Insolvency. He had papers written by himself. I declined to accept them. I told him he had better go to an Attorney. He went to Mr. Smith. This is the Writ he got sued out. Writ admitted marked W. A. D. M. -No. 1. Mr. Smith delivered this to me. Yorke asked me to proceed to Parrsboro' and attach. I took the Writ day it was delivered and proceeded to Parrsboro' same day. I met Yorke there. He wanted me to attach logs belonging to Slayter and Stewart. I did not know the property, except as he directed me. 400 I knew nothing about the business of Slayter and Stewart. I acted under Yorke's instructions. I never saw the 500 logs mentioned in return. (Mr. Townshend objects to witness giving any testimony to alter, modify, or affect his return. I allow the answer because I do not think it alters, &c., the return.) Yorke said logs had been levied on by the Deputy Sheriff Fraser. The deals and lumber, in my return, attached at Ryfkogle's wharf, were pointed out to the Defendant. All property pointed out to me, was pointed out by Defendant, as Slayter and Stewart's, on Ryfkogle's wharf. I was forbidden to take possession of the deals, scantling, and boards, &c., mentioned in my return, as Captain Ryfkogle's property, by Mr. Stickney. (Mr. Townshend objects to this evidence. I allow it.) Was forbidden at the time I went to attach. Yorke was present when I went to attach. I was forbidden to attach the logs. All the logs and all the property by Mr. Stickney. Stickney was in Ryfkogle's office. He was writing there and appeared to have charge. Defendant was present at the meeting of creditors when Ryfkogle claimed this property as 410 his. Defendant told me to call a meeting of creditors as quickly as possible. The meeting was called. Looks at his papers. These are the minutes of the first meeting, Nos. A. B. C., W. A. D. M. Meeting adjourned. (No. B., Mr. Townshend objects as not signed by chairman. I admit it subject to objection.) Minutes, true in substance, and in fact. I called on Yorke for payment of my fees. I directed Charles R. Smith, Esq., to give him notice of taxation. He, Defendant, came to my office afterwards, showed me the notice of taxation, and said he had come to tax my costs. He asked me to go to Judge Morse's to tax the costs. Mr. Smith was with him. We conversed all the way up to Judge Morse's. He said there was not the property he thought there was. He said there were only 150 logs where he thought there were 500. He afterwards said he did not think there was even that quantity. We had this paper at Judge Morse's. He examined the paper and objected to \$2.00 as travelling expenses. It was struck off at Defendant's request. Also \$2.00 at another time struck off at Defendant's request. Custody money \$113. He got this

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sun struck off because he said there was no Estate to take charge of. I asked Yorke when he would pay the bill, and he said he had not the money. I asked him for a note, and he said he would pay the bill in a fortnight. Never was ordered to sell Estate by inspectors. Never was directed to sell. Defendant wrote me once or twice to sell Estate. He never offered me an indemnity if I would sell. I never have been paid these fees. I don't know of property out of which to get my fees. (Objected to by Mr. Townshend on: 1st. It contradicts return; 2nd. By Sect. 47, Insolvent Act of 1875, points out the way Assignee can be discharged.) Paid the cash and rendered the services charges for in this bill. They are the ordinary charges, and I did it all at the request of Defendant.

Cross-examined by Mr. Townshend:—Original bill, \$187. Judge took off \$117 of this bill. I meant \$187 was a reasonable Bill had I had custody of Estate. The adjourned meeting held at request of creditors. Was three times on this Estate to Parrsboro', was two days at Parrsboro'. Costs, \$5.60. \$1 per day cost for board. I drove my own horse. I don't remember a certificate at Yorke's request to C. R. Smith. The times I went to Parrsboro', according to minutes of meeting. I had no Estate to take custody of. Had no charge of any property. Paid three visits to Parrsboro'. Hired a horse and sleigh. Four dollars might square me each visit. Paid no one to take charge of property. Paid cash for horse hire \$3.00. This would be all I paid out in executing the Writ of Attachment. Twice I went by rail, three dollars on railway, and over two days. Two times I went by rail. About seventy-seven cents it costs me to Spring Hill. Five dollars would cover my expenses the second time. April 30th, I went by rail; costs by rail \$2.77. I was two days this time again. Mr. Smith was present with me at Judge Morse's. He gave notice of taxation. Bill taxed 10th day of July, 1880. Defendant promised to send me the money within a fortnight. From time of attachment I made no effort to take charge of property. Yorke wrote me to do something. I have made no transfer of the Estate as yet to anybody. No bonds were filed by Dr. Clarke. Have had no correspondence with Dr. Clarke as to whether he accepted the position. Everything remains as at last meeting of creditors, so far as I know. Other creditors, beside Defendant, filed claims. I declined because I considered I had no right to take possession of Estate because Dr. Clarke was Assignee. I was aware Dr. Clarke could not take the Estate until transferred. I wrote I was ready to transfer it to Clarke. Had no correspondence with Clarke. The affidavit and returns are attached to the Writ of Attachment, and are signed by me. Looks at letter. This is my handwriting, marked W. A. D. M.—Nos 5 and 6. This is my certificate, marked W. A. D. M. Looks at minutes, A. B. and C. Says these are the only records of the Estate.

C. R. Smith, Esq., called and sworn.—Am an Attorney. Live in Amherst. Issued a Writ of Attachment against Slayter and Stewart. Defendant told me he had spoken to Greenfield and directed me to hand the Writ to him. I did so. (Objected to by Mr. Townshend that the statement that Yorke directed Smith to hand the Writ to Official Assignee confidential.) I allow the question. Cannot remember the time, but think it was the 7th January, 1880. Was employed by Greenfield to give notice of taxation to Yorke. I did so. Looks at papers, and says this is the notice. This is Yorke's acceptance of service on the back. Notice marked W. A. D. M.—D. Yorke said it was hard he had to pay the costs. He said when he put Slayter and Stewart into insolvency, he thought there were from four to five hundred logs at the foot of the slant, and he found there was no Estate there, and he would have to pay the bill out of his own pocket. This was when going up to tax the bill of costs. He said there were a number of them joined together to put Slayter and Stewart into insolvency, but he had no writing from them, and consequently could not hold them. He said Greenfield's bill was too high. Mr. Greenfield said whatever the Judge allows me I am satisfied, and that he only charged him what he had charged on other Estates. Myself, Defendant, and Plaintiff went into Judge Morse's chambers. I told Judge Morse we had come to tax the bill. This is the bill. Looks at bill. Says this is the Judge's signature. Bill put in, marked W. A. D. M.—E. First objection made was to the item custody of the Estate, \$113. (Mr. Townshend objects on the ground that the bill speaks for himself. I allow questions as to what occurred between Plaintiff and Defendant when bill was being taxed.) He said Greenfield had written him to look after Estate, and there was no Estate to look after, as Ryfkogle was claiming the property. The Judge said if no Estate it must come off, and it was struck off. There was a good deal of conversation about it. The Judge took off \$2 on each travel. Greenfield counted up his expenses on Yorke's objection, and said it does not pay me. The Judge said I will take \$2 off, and Greenfield said what the Judge did he was agreed to. I do not think I came down with Plaintiff and Defendant from Judge Morse's. I did not go to Judge Morse's house, as Mr. Yorke's Attorney. I considered the relationship of Attorney and client had ceased when the Writ of Attachment was issued. The Defendant complained of having to pay the bill, and said he had not the money then, but would pay it when he got the money. Cross-examined:—Was employed by Yorke to take out the Attachment as Attorney. I have been paid for my services by him. Taxed my bill. My further proceedings was getting an order for constructive service on Defendants Slayter and Stewart on account of their absence from the Province. This was done a short time after the Writ was issued. Order for constructive service was granted 11th February, 1880. After its publication, in the "Royal Gazette," Yorke saw me and spoke to me and wrote me a number of letters in reference to the affairs of the Estate, and I advised him on the subject. This was all previous to the taxation. I attended before the Judge with Greenfield and Defendant. The bill of costs was in my possession. I presented it for taxation. My object in going to Judge Morse's was to get my own bill taxed. Greenfield and Yorke did the talking. I was not paid by Greenfield for my services. I advised Yorke he was liable for Greenfield's costs. I have since told Yorke he was liable for the taxed bill. Plaintiff rests. Mr. Pipes puts in and reads:

1st. Writ of Attachment dated and issued 7th January, A. D., 1880, with exhibits Nos. 2, 3 and 4. Writ is marked W. A. D. M.—No. 1.

2nd. Minutes of first meeting of creditors in Estate of Slayter and Stewart, marked respectively W. A. D. M.—A. B. and C.

3rd. Notice of taxation of costs in case of Frederick Yorke, Plaintiff, against John W. Stewart and George M. Slayter, Defendants, as between Assignee of said Defendants and Attaching Creditor, marked W. A. D. M.—D.

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4th. Bill of costs taxed, marked W. A. D. M. - E. Mr. Townshend here objects to this bill of costs being received in evidence by me on the ground that it is a bill of costs taxed in the Estate of Slayter and Stewart. 2nd. That the charges allowed therein are illegal, and not charges against Defendant. I admit it subject to objection and mark it above W. A. D. M. - E.

Mr. Townshend moves for nonsuit on grounds set out in Rule for Appeal. I decline to nonsuit Plaintiff.

499 Frederick Yorke called and sworn: I am Defendant. I reside in Parrsboro'. I am the creditor who put Slayter and Stewart into Insolvency. I pointed out the property of Slayter and Stewart to Greenfield, the Assignee. I pointed out deals, sawnting and boards, mentioned in return of Writ, to Greenfield, on Ryfkgole's wharf, and as the Assignee told me he had levied on them. They were the same the Sheriff had previously attached. Some were sold by the Sheriff, some \$30 worth. Greenfield notified me Sheriff was going to sell. Deals sold, \$675. (This evidence objected to by Mr. Pipes on ground of estoppel, Defendant having said in presence of Smith and Greenfield on taxation of costs there was no property. I allow it.) I gave \$688 as the value of the property to the Sheriff. This valuation only for deals. The logs valued at \$435, well worth that. Slayter and Stewart got the logs out. They were working the mill that belonged to me. They, Slayter and Stewart, absconded before Plaintiff levied and after Sheriff had levied. I did not promise to pay the bill as taxed. Never made myself liable in any way or shape. I attended the taxation before Judge Morse. I thought it was in the matter of Slayter and Stewart and would be against the assets. I tried to reduce it. I have no recollection of the conversation as Smith details it. I expected to pay in case there were no assets; if assets, I expected them to pay Greenfield. I thought the bill too high. Dr. Clarke did not act as Assignee. He declined to act. I don't see how I could say there was no Estate; the logs were there, and I know there was an Estate, and it is there yet. I tried to get Greenfield to proceed and take charge of the assets, and pay himself. I might have said if there were no assets the bill would be paid, if I had to pay for it. Looks at letter and says, this is the letter I sent to Greenfield. Dated Sept. 21st, 1880, marked W. A. D. M.—F. I told Greenfield he was Assignee and he had property in his hands and must get his pay out of my Estate.

500 Cross-examined by Mr. Pipes: Stiekney was Ryfkgole's leading man. I attended before Judge Morse and taxed bill. Judge Morse declined to tax \$113 because the Assignee was not there and had no person to take charge of the property. I was advising with Mr. Smith and how to act in the matter. I never said to Smith there was not 500 logs at the foot of the slant. I never told Greenfield in Smith's presence that I had come to the conclusion there were no logs at the foot of the slant or slide. I never told Greenfield there was no property of which he could have custody. Sheriff had levied on logs at the slide. He had levied only on 300 logs. Greenfield levied on same property as the Sheriff. I knew the property was under levy before Slayter and Stewart were put into insolvency. Plaintiff never asked me to indemnify him. I never offered him a bond. I am the Mr. Yorke mentioned in the minutes marked W. A. D. M., letter C., as recording the motion for the bonds for Dr. Clarke as Assignee. In answer to a question put to witness by Mr. Pipes, witness says: I did write the Statement respecting this case contained in the paper sent to you. I did not pretend to write the exact truth of the case. Was at all the meetings of the Estate, but not there 520 all the time. Nothing said at any of the meetings about the creditors fixing Greenfield's fees. I swear Greenfield never offered to go on if indemnified.

R. McLean, Sheriff, called and sworn:—Am Sheriff. This Execution was placed in my hands—issued 10th December, 1879, received 20th December, 1879. I acted under it. Execution marked W. A. D. M.—G. Execution was sent to Deputy Fraser. It was sent by me. Official Assignee levied on property after my deputy left and interfered. Fees were not paid by Official Assignee. Subsequently sold property under Execution. Deals on Ryfkgole's wharf were sold to pay costs of Attorney and my own costs. Ryfkgole's agent was the purchaser. Stiekney paid the cash. Looks at Execution and says this is my return. Cannot remember the amount levied. (Objected to on the ground it cannot affect Plaintiff, by Mr. Pipes.)

530 Cross-examined: This return was made yesterday by me on request of Mr. Townshend. Sale made before expiration of Execution. Mr. Medley Townshend requested me to make this return, and I did so. I did not return this Execution to Mr. Blenkhorn. I never returned it.

Alexander Fraser called and sworn:—I am Deputy Sheriff at Parrsboro'. Looks at Execution. This Execution sent to me at Parrsboro' to act upon. Under the Execution, levied on property of Slayter and Stewart. Slayter gave me this Memo. as their property. Sheriff said. Not present at sale. Saw Ryfkgole. He was present when Slayter gave this Memo. to levy on. (Objected to on ground that Slayter and Stewart and Ryfkgole cannot make title to property. I admit this Memo. subject to objection, and mark it W. A. D. M., letter L.) I gave a list of this property to the Sheriff.

Cross-examined:—Never saw this return before. Defendant rests.

540 Mr. Pipes here proposes to call Mr. Smith to contradict Defendant on ground Greenfield offered to go on with business of Estate if Yorke would indemnify him. (Mr. Townshend objects, and I allow him to be recalled.)

Smith recalled:—Greenfield offered to go on with the business of the Estate if he, Yorke, would give him a bond to indemnify him. This he said in presence of Judge Morse at taxation of costs and at Greenfield's gate. Yorke complained Greenfield did not go on with the business. Greenfield said you have an Assignee of your own. Yorke said you did not send him down his bond. Yorke said to Greenfield you must settle up the business. Greenfield said I am perfectly willing if you will give me a bond of indemnity.

Mr. Townshend renews his motion for non-suit on grounds in Rule. I decline to non-suit. Mr. Townshend puts in evidence:

1st. Letter from Plaintiff to Defendant, dated 11th January, 1880, in two parts, marked respectively W. A. D. M.—Nos. 5 and 6.

550 2nd. Letter from Defendant to Plaintiff, of date 21st September, 1880, marked W. A. D. M., letter F.

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- 3rd. Memo. from Slayter to Deputy Sheriff Fraser of property levied on under Ryfkogle's Execution, marked W. A. D. M., letter G.
 4th. Execution in Ryfkogle vs. Stewart et al., issued 10th December, 1879, marked W. A. D. M., letter H.
 5th. Certificate of W. C. Greenfield, Official Assignee, dated 3rd March, A. D., 1880, marked W. A. D. M., letter I.

GREENFIELD)
 vs.)
 YORKE)

DECISION.

This is an action brought by Greenfield, one of the late Assignees for Cumberland, appointed under the Insolvent Act of 1875, to recover from the Defendant, Yorke, the attaching creditor of the Insolvents Slayter and Stewart, at Parrsboro', the sum of \$70.40, amount of costs taxed by me, in July, 1880, pursuant to notice of taxation of the date 10th July, 1880, service of which notice was accepted by Defendant. The taxation took place between the 10th and the 20th July, now last past, under and by virtue of this notice. Defendant and Plaintiff, in company with C. R. Smith, Esq., appeared before me at my Chambers, in Amherst, and the bill was taxed by me. On opposition of Defendant, items were struck out of it, and the bill largely reduced, was taxed at the sum of \$70.40, and Defendant thereupon promised to pay it, as is clear from the evidence of Plaintiff and Smith. The action to recover this taxed bill was brought on the 11th September, 1880. Defendant sets up as an answer: 1st. The plea of never indebted. Then three added pleas. The 1st of the added pleas states that Plaintiff, as Official Assignee, became Creditors' Assignee by default of appointment on part of creditors, and, as such, took no steps to realize the assets of the Insolvent's Estate, and refused to do so. 2nd added pleas: Is a plea on equitable grounds, substantially the same as the 570 1st. 3rd added plea, to jurisdiction. With respect to the first two added pleas, the minutes of the first meeting of creditors show to my mind that these pleas cannot be sustained. The minutes show that Plaintiff did not become Creditors' Assignee by default of appointment or by choice of creditors, but on the contrary Dr. Clarke became and was selected Creditors' Assignee. Reference to the adjourned meeting of the 30th April, 1880, shows that A. W. Gow, a person representing a creditor with a claim duly filed to the amount of \$234.22, moved that Dr. Clarke be requested to act as Creditors' Assignee of the Estate, and that this motion was seconded by one Vickery, with a claim also duly filed amounting to \$121.89. Subsequently Vickery reported to the meeting of creditors that Dr. Clarke had accepted the position of Assignee, and the creditors, thereupon, on motion, fixed the amount of security that Dr. Clarke should give. The creditors had previously, at this meeting, appointed Inspectors. This appears to me to be 580 sufficient appointment under the law. No dissenting voice was raised, at this first meeting, against Clarke being Assignee. I gather from these minutes that the creditors unanimously have an inclination to express a preference for Dr. Clarke. Bump on Bankruptcy, page 477, lays it down on the authority in "Re Pearson, 2, B. R. 477." There is no such thing known to the law as an informal vote. An expression *vice voce*, by the creditors as their preference, is a vote *vide* Clarke's Insolvent Act of 1875, page 140. This, to my mind, disposes of the two pleas that Plaintiff became Assignee of Slayter and Stewart's Estate by default of appointment, and, if no longer Assignee, he could not intermeddle with the Estate or sell or dispose of the same. He merely became its custodian until Clarke should qualify himself. Yorke, the Defendant, in his evidence says: "Dr. Clarke did not act as Assignee, he declined to act." The course which I think under the circumstances ought to have been adopted then, was to have had another meeting called, as by law required, and procured the removal of Dr. Clarke, on the ground that he would not act and 590 had not qualified himself. No movement of this kind appears to have been made by the creditors or the inspectors of the Estate, nor was any application ever made to me as Judge. In such a state of things, either Clarke should have qualified himself by giving the security, or a new Assignee be appointed. In Watherspoon's Insolvent Act, 1875, page 79, it is laid down on the authority of *ex parte* Pearson, 3 Ded 324. A new choice will be directed where the Assignee has been chosen without his consent or knowledge and declines to act. In Bump on Bankruptcy, page 485, in Re-George E. Sands 7, Ben. 19, it is laid down the removal of an Assignee from office is necessary before another Assignee can be appointed in his place. There is no pretension of any meeting of creditors in the Estate after the first meeting except the one mentioned in Defendant's letter, to Plaintiff, of the 21st September, 1880, which is ten days after the action brought in this cause, which was an informal meeting not regularly called, and the object of which was to direct Greenfield to sell the Estate. It was in all respects an illegal meeting, for the letter shows that 600 Ryfkogle, who is proved by the minutes of the first meeting to be the largest creditor and whose claim was duly filed was purposely not invited to attend a meeting called to dispose of the Estate of which he was the largest creditor. This meeting was held in Defendant's office. Why was Ryfkogle purposely excluded? Was it because the attached property was his, and if he had attended the creditors would not have ordered the sale? Or was it an attempt to get rid of paying Greenfield his bill? The creditors themselves seem to have set but little value on the assets of this Estate, if any there were, for from the first meeting of creditors, on the 25th March, 1880, until the illegal meeting mentioned in Defendant's letter of the 21st September, 1880, they neither moved in the matter nor paid the least attention to it. In the month of July, 1880, pursuant to the notice of taxation, I taxed the bill sued on in this cause, and from which no appeal was ever taken, as provided by Section 128, Insolvent Act of 1875, and I mention my power now to alter, depart from, or reduce the bill so taxed. If I should attempt to do so, I would be doing what I 610 submit an inferior Court, or a Judge thereof would not be justified in doing so. I would be improperly assuming the functions of revision which belong alone under the Insolvent Act, in case like this, to the Judges of the Supreme Court, for if I was wrong in taxing these costs against Defendant, as I did in July, the matter should have been taken to the Supreme Court, by way of Appeal, to be remedied. That the Official Assignee could fairly ask and demand

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something from the Defendant is, I think, clear. The Defendant in this case put him in motion under the Writ of Attachment. Bump on Bankruptcy, page 674, lays it down on the authorities. In *Re-Hughes* 1, B. R. 2^o, S. C. 2, Ben. 85 S. C. 1 L. T. 45. "That the funds necessary for the performance of a duty are to be advanced by the party for whom the services are to be performed." In this case, in the first instance, the services were to be performed for the Defendant Yorke, the Attaching creditor, and his subsequent promise to pay the bill will, I think, bind him, especially after recognizing the Plaintiff's claim, by appearing before me and contesting the taxation, and afterwards promising to pay the amount of the bill in a fortnight. Section 28, Sub-Section B, makes the Official Assignee an officer of the Court having Jurisdiction in the County or District for which he is appointed. He is accountable for money, &c., in the same manner as Sheriff and other officers are. I cannot bring my mind to the view that the act burdens him with all the responsibilities of a Sheriff, and excludes him from the right of looking for payment for fees of travel and service, &c., to the person who employed him. Under the Insolvent Act of 1869, the Judges of the Supreme Court of Nova Scotia, by order of the 13th of September, 1869, *vide* Clarke's Insolvent Act of 1875, page 422, ordered as follows:—"It is ordered by virtue of the 32 and 33 Vict. Chap. 16, intitled: 'An Act respecting Insolvency Sect. 139,' that until further direction therein the same costs, fees, and charges shall or may be taken or paid by and to the Judges of Probate, Counsel, Attorney, Solicitors, and Sheriff as are now payable to and taken by them in the Supreme Court or Court of Probate, in this Province, under and by virtue of the Act in that behalf."

630 By Section 123, of the Insolvent Act of 1875, it was provided, among other things, that the Judges of the Supreme Court of Nova Scotia, being the Court of Appeal under said Act, shall make, frame, and settle the forms, rules, and regulations to be followed and observed in proceedings in Insolvency under this Act; and fix and settle the costs, fees, and charges which shall or may be had taken or paid, in all such cases, by or to Attorneys, &c., and by or to Sheriffs, Assignees, &c. No application was ever made, so far as I am aware, by the Judges of the County Court to the Judges of the Supreme Court, to have the provisions of this section so far as the Province of Nova Scotia is concerned, carried into effect, and in default, Section 124 provided that until such rules of practice and tariff of fees have been made, as required by Sections 122 and 123, such rules of practice and tariff of fees of Insolvency, now in force in the said Province respectively, shall continue and remain in full force and effect." The practice in the Court of Probate always was and is to prepay fees for services to be performed. I now ask myself would the Judges of the Supreme Court, or the Judges of the Court of Probates, "under and by virtue of the acts in that behalf," to use the language of the order of the Supreme Court of 1869, in case similar to the present, have taxed or allowed anything to the Sheriff or the Assignee as against the party who put either of them in motion and promised to pay them. I think they would have allowed the fees for travel and service, &c. It is possible that in allowing Plaintiff remuneration beyond and exclusive of the actual expense of going to seize property and service of writ, I may have erred, although I do not think it excessive as it was fully discussed by Plaintiff and Defendant at time of taxation, but as the objection was not raised at this time, and I have so taxed the bill, and no appeal was ever taken by Defendant, as provided by the Insolvent Act, I feel myself now restrained from going outside or beyond the bill, for to do so would be to assume the right of revision. In my Judgment the bill is conclusive between the parties, and therefore binding on me, and I give Judgment to Plaintiff for \$70.40, the amount of the taxed bill.

RULE FOR APPEAL.—M.

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CUMBERLAND, S. S. }
In the County Court, 1880. }

(WILLIAM C. GREENFIELD, PLAINTIFF,
CASE: VS.
(FREDERICK YORKE, DEFENDANT.

The Defendant in this cause having filed Bonds to my satisfaction to respond the final Judgment to be given in this cause, I do order that Defendant have leave to appeal from my decision herein in favor of the Plaintiff to the Supreme Court of Nova Scotia, on the grounds following, viz:

1. That said decision is against law and evidence.
2. That evidence was improperly received and improperly rejected on the trial of the cause.
- 660 3. That the finding of the learned Judge that Plaintiff was not Assignee of Estate of Stewart and Slayter is contrary to the law and the evidence.
4. That Plaintiff being Assignee of the Estate of Stewart and Slayter, the Judge had no jurisdiction to tax or fix his fees or remuneration.
5. That it being proved that there was assets of the Estate of Stewart and Slayter more than sufficient to pay Plaintiff's bill, he was bound to resort to it for payment.
6. That Plaintiff cannot recover against Defendant as the moving creditor, for his fees and remuneration in proceeding as Official Assignee to attach the Estate of Insolvents.
7. That the fees and remuneration of Plaintiff were under any circumstances fixed or taxed by the Judge without authority. If Plaintiff was Assignee of Estate he had no jurisdiction to interfere at all, if he was not Assignee,
- 670 then the Assignee appointed by creditors should have been notified, which was not done.
8. That no appeal from the taxation of said costs could have been made by Defendant, as he was not a party to any contestation and could not have been made by the Assignee or any person authorized to act on behalf of the Estate, as no notice was given, and there was no opportunity of doing so.

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9. That Defendant was not originally liable to pay Plaintiff's claim, and any promise to do so would be void in law.
10. That no legal evidence of the appointment of any Assignee in the place of the Official Assignee was given.
11. That Plaintiff's bill, as taxed and allowed by the Judge, was not according to the tariff of fees fixed by law.
12. That the Plaintiff's costs, as taxed and fixed by the Judge, being illegal, no services or disbursements were proved independently of the bill of costs within the jurisdiction of the Court.
13. That Plaintiff's bill, as taxed, was not a proceeding in the Estate.
14. That the taxation of Plaintiff's bill of costs was not a final order in the Estate, and that Defendant could not have appealed therefrom.

Dated at Amherst, the 1st day of December, A. D., 1880.

(Signed)

W. A. D. MORSE,
Judge County Court,
District No. 5.

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