



DEVIZES SMALL DEBTS

Sainsbury & Saunders v Wheeler

There were as many as 90 plaintiffs entered hearing at this Court on Tuesday last, but many of them were withdrawn or settled prior to the sitting of the Court. Of those that came on, the following is worthy of public notice:

SAINSBURY and SAUNDERS v WHEELER. - This case excited considerable interest, as it involved a point of law, which has recently been much discussed, and upon which, his Honor, after mature consideration, appears to have changed his opinion, as it was mooted at the last Court, and decided differently.

Mr NORRIS appeared for the plaintiff, and Mr HILL, of Salisbury for the defendant.

The plaintiffs are coal merchants, and the defendant is a gunsmith of Devizes; and the action was brought to recover the sum of £3 6s 9d. - The defendant pleaded that he had been discharged by the Commissioners of the Insolvent Court, as an answer to £3 5s 9d. - and as to the remaining shilling, that it had been paid into Court previous to the service of the summons. Proof having been given of the plaintiff's demand - including the delivery of a bushel of coals at the price of 1s subsequent to the defendant's discharge - the defendant stated that Mr Sainsbury called upon him with his account, shortly after the last Court day, and that he then told him he might take the shilling out of the 5s., which his partner owed him (defendant).

The point first argued was whether, as the defendant had passed the Insolvent Debtor's Court, he was liable in the County Court for debts contracted prior to his discharge, and mentioned in his schedule.

Mr HILL, referring to the Act of 1 and 2 Vict. Cap. 110. contended that his client was protected by the adjudication under the Act.

Mr NORRIS, argued that the operation of the Act referred to by Mr Hill had been controlled by the Acts of 5th and 6th, and 7th and 8th Vic., which were retrospect in their operation; and cited the case of *Toomer v, Gingell*. 14 Law Journal p. 255, C.P. where it was decided that an order for protection under the 7th and 8th Vic. In the case of an Insolvent, protected his person only from process, and not after-acquired property unattached by his assignees. The point was argued with much ability by each party; but the Judge ultimately decided in favour of the defendant, as the debt now sought to be obtained had been entered in his schedule; observing, that the 7th and 8th Vic. Applied to the Bankruptcy Court.

Mr NORRIS then objected that the debt was improperly entered in the schedule, inasmuch as the amount was less than was really due. - HIS HONOR, however, was of opinion, - as it did not appear that there was any fraudulent omission - that the defendant was entitled to the benefit of his discharge under the jurisdiction of the Act.

The only remaining point was as to the shilling; and it appearing that the shilling was not paid until after process was issued - the plaintiff having been entered at eleven whilst the shilling was not paid until two o'clock - his Honour gave judgement for the plaintiff for that amount.

Mr HILL then appealed to the Judge to withhold the costs; but his Honour said that the costs must follow as in ordinary cases. He could not attribute the slightest censure to the plaintiffs for endeavouring to obtain their debt under the 7th and 8th Victoria, as great doubts had arisen respecting the operation of that act.

The result by this decision is (and, as far as we are enabled to judge, it is a very correct decision) that debts included in the schedule of a debtor who has petitioned the Court for relief of Insolvent Debtors, cannot be recovered in the County Court; whilst debtors who have petitioned the Bankruptcy Court are not thus protected.

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