

New Jersey Court of Errors and Appeals.

THOMAS STOKES & SONS

v.

ALBERT HARDY.

Error.

Defendant in Error.

This cause has been before this Court on a prior occasion, and it then affirmed the proceedings in the Common Pleas wherein that Court had determined that the conduct of the defendant in error "was fair, upright and just," and it remitted the record into the Pleas for the purpose of having an assignee appointed and assignment made by the debtor (the defendant in error), pursuant to the statute.

The record shows that the proceedings in the Pleas had become *ex parte* by the retirement of the plaintiffs in error, who had elected to stand on the single question of the jurisdiction of the Court to hear the cause. (See Record, pp. 13 and 15.) This jurisdictional question was decided by this Court against the position taken by the plaintiffs in error before the Pleas.

First. *The recital in the Order of Discharge that the conduct of defendant in error was "fair, upright and just" entitled him to his discharge.*

Section 11, Gen. Stat., p. 1728, provides that when the Court so finds and the assignment has been made, the debtor shall be discharged.

Brown v. Wright, 1 Gr. 242. "These preliminary proceedings and proofs are co-extensive with the debtor's whole case. They were sufficient (but for the undertaking of the creditor) to have procured for him a judgment of discharge from the Court on the day of

the hearing. *They are final as to all other creditors.* And even after the remanding of the debtor to prison in consequence of the opposition made, he might without any further proof have been discharged for the want of a plea; and after plea filed, for the neglect of the creditor to pay his weekly allowance. All this plainly shows the intent of the legislation that their preliminary proceedings should be considered satisfactory and entitle the debtor to his discharge.

In *State v. Stiles*, 7 Hal. 298, the Pleas met without notice to the creditor who had had the debtor remanded, took an assignment on one day, and met on the following day and discharged the debtor. Such action was held legal by the Supreme Court.

The withdrawal of the plaintiffs in error from the Pleas after that Court decided it had jurisdiction and would hear the debtor's application on the merits, made the subsequent proceedings in Pleas *ex parte*.

Hamilton v. Chevalier, 3 Harr. at 434, in which it is said that these proceedings are summary and *ex parte*; and in *Brown v. Wright*, *supra*, that they are final as to all creditors who do not appear.

See also *Redford v. Cramer*, 1 Vr. at 252.

The hearing had on the seventh day of December, 1903, was a legal and final proceeding and determination of this application on the merits. The Chief Justice who delivered the former opinion of this Court, held that all the prosecutors were entitled to ask was that the *status quo* should be restored and the record remitted for further proceedings. *Stokes v. Hardy*, 42 Vr. 52. The further proceedings were in accordance with the opinion of this Court. See also Mr. Justice Pitney's opinion in *Sullivan v. Upsconti*, 39 Vr. 543 at 551.

Second. The record had been remitted.

Citizens' Gas Light Co. v. Alden, 15 Vr. 648.

Welsh v. Brown, 13 Vr. 323 at 324.

A record removed into the Supreme Court by certiorari remains there in legal contemplation *until remitted by order* of the Court.

The order of discharge recites that the record had been remitted.

Third. The second reason (p. 25), that the debtor had not appeared at each subsequent term is answered by *Louis v. Kaskell*, 22 Vr. 236 at 238.

There was no cause pending in the Common Pleas after the removal of the record until remitted by order of the Court. *Gleason v. Adams*, 25 Vr. 506.

Fourth. All the other reasons for reversal existed before the first certiorari was allowed.

The parties are concluded from litigating whatever might have been contested in the former proceedings. *City of Paterson v. Baker*, 6 Dick. 49.

Respectfully submitted by

AARON V. DAMER,
Of Counsel with Defendant in Error.

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New Jersey Court of Errors and Appeals.

THOMAS STOKES AND BERTRAM
STOKES, Partners, trading as
Thomas Stokes & Son,

Plaintiffs in Error,

vs.

ALBERT HARDY,

Defendant in Error.

In Error to
Supreme
Court.

BRIEF FOR PLAINTIFF IN ERROR.

FREEMAN WOODBRIDGE,

Attorney for Plaintiffs in Error.

This writ of error brings up an order of the Supreme Court (p. 23, l. 30, &c.), affirming an order made in the Court of Common Pleas of the County of Middlesex, April 25th, 1905 (p. 15), which last mentioned order was removed to the Supreme Court by a writ of certiorari allowed to the Middlesex Court of Common Pleas (pp. 4 and 5).

On April 7, 1903, Albert Hardy filed his petition in the Court of Common Pleas of the County of Middlesex, praying for his discharge as an insolvent debtor (p. 6-8). The Common Pleas Judge by indorsements on the back of the petition continued it until September 14, 1903, at which time he made the order fixing day (p. 8, l. 20, &c.), and subsequently on November 30, 1903, that order and the petition were filed with the

Clerk of the Court (p. 9, l. 20, &c.) Pursuant to the proceedings and publication of notice (p. 9 to 11), the Court of Common Pleas made the order of discharge (p. 12). This order had no date but it appeared from the minutes (p. 13), that it was December 7, 1903. These proceedings were removed by certiorari to the Supreme Court and were there set aside.

Stokes vs. Hardy, 42 Vr. 116.

On further appeal to this Court the order of the Supreme Court reversing the order of the Court of Common Pleas was modified (*Stokes vs. Hardy*, 42 Vr. 549), and this Court remitted the record of the Supreme Court, by the order on page 13, l. 30, to page 14, l. 26.

It is obvious that this proceeding by the terms of that order placed the insolvent debtor back in the Court of Common Pleas, with all his proceedings therein taken approved by the highest Court of this State, except only his discharge, which was annulled, and therefore in the Court of Common Pleas it became necessary for him to "*further proceed according to law.*" (P. 14, l. 14.)

What did he do? Without notice to the plaintiffs in error, or to any of his creditors, without applying to the Court of Common Pleas to fix a day for the hearing, pursuant to the statute; without filing the remittur from this Court or the Supreme Court with the Clerk of the Common Pleas Court; without filing an assignment with the Clerk, he appears in Court on the twenty-fifth day of April, 1905, and obtains the second order discharging him (p. 15). Subsequently, on May 11th, 1905, fifteen days later, this order, together with an assignment and the remittur from this Court, were filed in the Court of Common Pleas (see filing marks pp. 14, 16, 17). The plaintiffs do not think that these were "*further proceedings according to law,*" and they obtained the writ of certiorari (p. 4), with the result that the proceedings were affirmed (see the opinion p. 21, and the rule of affirmance, p. 23, &c.), which last affirmance this writ brings to this Court for review.

LAW.

I.

THE ORDER OF DISCHARGE HAVING BEEN VACATED BY THIS COURT, ON WHATEVER GROUND, THERE WAS NOTHING BEFORE THE COURT OF COMMON PLEAS EXCEPT THE DEBTOR'S PETITION, INVENTORY AND ACCOUNT; AND "*FURTHER PROCEEDINGS ACCORDING TO LAW*" REQUIRED HIM TO PROCEED DE NOVO FROM THAT POINT.

(Assignments of Error 1st, 3d, 4th, 5th and 6th, p. 25 to 27.)

The previous order of discharge made in the Court of Common Pleas December 7th, 1903, was by the order of this Court annulled, so far as it discharged the defendant from imprisonment, and the record was remitted to the Court of Common Pleas, there to be "*further proceeded with according to law.*" (P. 14, l. 10, &c.)

Stokes vs. Hardy, 42 Vr. 549.

That was the whole order; all other parts were mere recital. There was then nothing before the Court of Common Pleas except only the debtor's petition and his inventory and account. The order fixing a day and the notices were without effect because the order of discharge made on the day thus fixed and noticed had been vacated. Certainly neither the debtor nor his creditors were required to appear in Court on the day already passed a year and a half or take notice that such a day had any legal significance in the future proceedings. It may be that these proceedings were found correct, as the Court of Errors and Appeals held, but when the order was vacated the day thus fixed and noticed was passed and, therefore, of no significance or legal force.

The whole effect, therefore, that the remission of the record of the Court of Common Pleas could have had under the order of the Court of Errors and Appeals was that the defendant's petition, inventory and account were properly on file and properly before the Court of Common Pleas. This is in fact what the Court of Errors and Appeals held and it was in this respect that they disagreed with the Supreme Court. It is obvious, therefore, that in all other respects, by the very terms of the remittitur, he was bound to proceed according to law.

It is not an answer to this to say that this Court decided that the Court of Common Pleas was correct in adjudicating on the proceedings before it that the defendant was entitled to his discharge. Conceding that this Court so decided, it is not the *adjudication* but the *order in writing* under the hands and seals of the Court that entitled the defendant to his discharge. (Gen. Stat. Vol. 2, p. 1728, Sec. 11, p. 1729, top.) And that order having been set aside, on whatever ground, was vacated in its entirety, and there remained no evidence of any adjudication.

Arowsmith vs. Vanarsdale, 1 Zab. 471-473.

Gulick, Exec., &c., vs. Conover, 15 N. J. Law, (3 Gr.) 420.

The appellate court may indicate the correct procedure and did so in this case, but that procedure was to be followed in the Court of Common Pleas. The order which discharged the defendant from imprisonment was vacated. The other proceedings affirmed (p. 12, 13 and 14). What then remained before the Court of Common Pleas? Nothing at all except the petition, inventory and account.

II.

THE DEFENDANT DID NOT APPEAR BEFORE THE COURT OF COMMON PLEAS AT EACH AND EVERY TERM OF COURT FROM THE FILING OF HIS PETITION UNTIL DULY DISCHARGED, AS REQUIRED BY THE STATUTE, AND THE COURT WAS THEREFORE WITHOUT JURISDICTION TO MAKE THE ORDER OF DISCHARGE.

(Second Assignment of Error, page 25, l. 32, &c.)

The Supreme Court did not pass upon this, although it was presented in the first reason. (P. 18, l. 39, &c.)

The bond given by the debtor to the plaintiffs is conditioned that he shall appear at the next term of the Court of Common Pleas and at every subsequent term until thence duly discharged. Gen Stat. Vol. 2, p. 1727, sec. 2.

The defendant seems to have appeared at each term until he was discharged the first time, December 7, 1903, but thereafter until the April Term, 1905, when the second order of discharge was made (p. 15), there was no appearance by the defendant. The Court, therefore, lost jurisdiction to make the order at present under review. Gen. Stat. Vol. 2, p. 1727, sec. 2.

Louis vs. Kaskel, 22 Vr. 236-238.

It is no reply to say to this that while this is made a condition of the bond it is not required by the section of the act relating to the procedure. The statute must be taken as a whole and the condition of the bond, as prescribed in the second section, must be considered as a requirement for the procedure. Neither is it any answer to say that the defendant was not obliged to appear at each term of court while the appellant proceedings were pending. The condition of his bond is clear. The statute is clear. It makes no exception for the pendency of the appellate proceedings and while his

order of discharge was good until reversed, having been reversed it was as though it had never been made.

Arrowsmith vs. Vanarsdale, 1 Zab. 471-473.

In other words, from December 7, 1903, the date of the first order of discharge in the Court of Common Pleas, until April 25, 1905, the date of the present order under review, the defendant's discharge in legal contemplation was never refused or granted until the determination of the Court of last resort against its validity. He was, therefore, bound by the express terms of the statute during the pendency of the appellate proceedings to appear at every term of Court or else surrender himself to the Sheriff.

Voorhees vs. Thorn, 1 Zab. 77.

This the defendant did not do; by reason of it the bond has become forfeited and the Court lost jurisdiction to make the order of discharge. Therefore, in order to have the benefit of his insolvent bond for this breach, the plaintiffs in error must proceed to set aside this order of discharge, because although the bond has been legally forfeited the order of discharge is an answer to it until vacated.

Skillman vs. Baker, 3 Harr. 134.

Kirby vs. Garrison, 1 Zab. 179.

Louis vs. Kaskel, 22 Vr. 236, 237-239.

The order of discharge cannot be attacked collaterally in an action on the bond.

Louis vs. Kaskel, 22 Vr. 236.

III.

THE REQUIREMENTS OF THE STATUTE IN THIS CASE WERE COMPLETELY IGNORED.

a. The Court of Common Pleas did not name, as required, a time and place at which it would attend and hear what could be alleged for and against the liberation of the debtor. Gen. Stat. Vol. 2, p. 1736, Sec. 36.

(Third Assignment, p. 26.)

The words "*further proceedings according to law*" in the remittur could not have referred to anything but the legal requirement that the Court should fix a day not less than forty days thereafter for the hearing. The Court has no jurisdiction to act summarily in the matter of the discharge of insolvent debtors.

Stryker vs. Rea, 6 Halst. 319.

b. The debtor did not cause notice to be served upon the plaintiffs or their attorney; did not publish such notice, nor present proof to the Court of the giving or publishing of such notice. (Assignments 4th, 5th, and 6th, p. 26.)

This is expressly required by the act. Gen. Stat. Vol. 2, p. 1736, Sec. 36. And it is not within the discretion of the Court to dispense with it, but is jurisdictional.

Louis vs. Kaskel, 20 Vr. 592.

"*Further proceedings according to law*" clearly also contemplated the fulfilment of this statutory requirement.

IV.

IT DID NOT APPEAR IN THE ORDER OF DISCHARGE THAT THE DEBTOR WAS EXAMINED TOUCHING AND CONCERNING THE DISPOSITION OF HIS ESTATE, THE TRUTH AND FAIRNESS OF HIS INVENT-

ORY AND ACCOUNT, OR WHETHER OR NOT HIS IMPRISONMENT WAS COMPULSORY OR VOLUNTARY.

(Assignments 7th, 8th and 9th.)

It is obvious that this order is bad on its face.

The Court of Common Pleas sitting in insolvency sits as a special statutory tribunal and has no control to discharge from imprisonment a person confined under the process of another court except as given in the statute. In these special statutory proceedings, even where vested in courts of general jurisdiction acting judicially, it has been invariably held that the order must show that it is based upon the facts which give to the court jurisdiction, as prescribed by law.

Journey vs. Brown, 2 Dutch. 111.

Hull vs. Hunt, Spen. 476.

Brown vs. Titus, 1 Vr. 340.

Potter vs. Berry, 27 Vr. 454.

Preusser vs. Cass, 25 Vr. 532, where on page 534 the Court stated the object of this rule to be that a reviewing court may discover the grounds upon which the adjudication was made.

See also Chancellor Zabriskie on this subject in *Bray vs. Neill's Ex.* 6 C. E. Gr. 344-349.

By the terms of the statute (Gen. Stat. Vol. 2, p. 1728, secs. 9 and 10), the Court must examine into and adjudicate—

First.—The disposition of the estate.

Second.—The truth and fairness of the inventory and account.

Third.—Whether or not the imprisonment was compulsory or voluntary.

And by the above authorities it must appear in the order in proceedings taken under the statute that these things were passed upon, or else the order is bad on its face.

V.

THE ASSIGNMENT WAS NOT FILED WITH THE CLERK OF THE COURT PRIOR TO THE MAKING OF THE ORDER OF DISCHARGE, NOR WITHIN THE TIME REQUIRED BY LAW.

(Twelfth Assignment, p. 28.)

This is expressly required by the 11th Sec. Gen. Stat. Vol. 2, p. 1728-1729.

The assignment was not filed with the Clerk of the Court until May 11th, 1905 (see p. 17, l. 35). The order was made April 25, 1905 (p. 15, l. 31, &c.) The recital in the order that the assignment had been filed with the clerk (p. 15, l. 30) is not conclusive as against the filing mark of the clerk. Many records are complete when deposited with the court and the filing mark of a court is just as good as the filing mark of a clerk, as was held when this case was previously before this court. But here the statute prescribes with whom the assignment shall be filed and it must be *with the clerk*. The Court has nothing whatever to do with it. The clerk having placed his stamp upon it, it must be presumed, in the absence of proof to the contrary, that that stamp is correct.

It is not anything near like a case where no filing mark has been placed upon the instrument at all. The filing mark is conclusive evidence when prescribed by statute. 8 Enc. Pld. and Prac. 928. And the recital of the Court to the contrary does not contradict it any more than the statement of any other person who has nothing whatever to do with the matter would contradict it. It is not a matter at all within the knowledge of the court; it is not a file that may be deposited with the court. There is only one place where it can be by the express terms of the statute and that is with the clerk and his mark alone, therefore, must determine the date. The case of *Stevens vs. Stiles*, 7 Halst. 296, is not in point. There the debtor had been remanded

to prison and the creditors failed to pay their weekly allowance. In such case it would seem that he is entitled to his discharge as a matter of right under the 13th section (Gen. Stat. Vol. 2, p. 1729), and it was held that in such case it was not necessary that the assignment be filed at all.

VI.

THE PLAINTIFFS NOR ANY OF THE CREDITORS DID NOT HAVE AN OPPORTUNITY TO ATTEND AND EXAMINE THE SAID DEBTOR TOUCHING THE MATTERS AND THINGS SET FORTH IN HIS PETITION AND PROCEEDINGS, THE TRUTH AND FAIRNESS OF HIS INVENTORY AND ACCOUNT, OR TO CONDUCT SUCH AN EXAMINATION AS WOULD SATISFY THEM THAT THE CONDUCT OF THE DEBTOR WAS FAIR AND JUST.

(Fourteenth Assignment, p. 28, l. 30, &c.)

Here has been undoubtedly a most remarkable proceeding, in which the provisions of the statute for the protection of creditors have been completely subverted.

It does not matter whether the Court of Common Pleas or the debtor or his attorney was to blame for not filing the petition on which the original order for discharge was granted. The fact remains that the creditors before the discharge had no opportunity to make an examination. For that reason they carried this case to the appellate courts and they were there successful in vacating the order discharging the debtor because of irregularities in his proceedings. On such successful termination of their proceedings in the appellate court it would seem that the whole policy of the act, as well as common fairness and justice would entitle them to

be heard on the things that had before been denied, and to which the statute entitles them.

It may be that the debtor was not responsible for the judge keeping the papers in his pocket, if he did keep them in his pocket; certainly the creditors were not responsible for that condition of affairs though. It is conceded in the opinion of this Court (42 Vr. 551), that this failure of the judge was a neglect of his official duty. It is said that Hardy ought not to suffer for it. Certainly the creditors ought not to suffer for it either. We, therefore, respectfully insist that it was not the intention of this Court to make the creditors suffer for it and that the reasonable and proper interpretation of the decision rendered in *Stokes vs. Hardy* (42 Vr. 549), required that these proceedings be conducted in the Court of Common Pleas *de novo* and the creditors given an opportunity to be heard on what had previously been denied them. This is the provision of the statute. The 11th section of the Act (Gen. Stat. Vol. 2, p. 1728), makes it a *condition precedent* to the granting of the discharge that the creditors shall have an opportunity to attend and be satisfied. It says: "*The Court and the creditor.*" By the 13th and 14th sections if the creditor is not satisfied he has a right to remand the debtor to prison, pay a weekly allowance and demand a trial by jury. The debtor's petition (p. 6) showed a considerable list of goods. A debtor and his attorney cannot be permitted to so conduct a statutory proceeding however technically within its terms that the whole policy of the act shall be ignored and subverted. To affirm this order means that that is the result of this case. We do not think that such is the intention of this Court; whether by the judge or by the debtor, or by the attorney, it cannot be denied that these whole proceedings have been so conducted as to indicate unfairness, injustice and unrighteousness and a desire and effort, successful so far, to preclude the creditors from an examination which the statute says they shall have and of which they have been deprived. Look at the unfairness of it. We suppose the credit:

ors were bound to take notice of the records but before the remittitur from this Court had been set down and filed in the Court of Common Pleas this debtor steals surreptitiously into Court on a day fixed by himself and without notice, and obtains a new order of discharge. He makes an assignment and files the assignment and the order of discharge with the remittitur over two weeks after he has been discharged. Certainly such a course of conduct has no foundation either in the letter or the spirit of the statute.

This time the creditors are entitled to their bond, as has been seen by the authorities on this brief. To remit the case again for "further proceedings" would simply mean that the appellate court would again be obliged to set aside any order of discharge in order to clear the way for the plaintiffs to have an action on their bond. The debtor cannot now enter an appearance at each term of court between the presentation of his petition and his discharge, nor can he "*immediately*" surrender himself into the custody of the sheriff, as required by the statute, for a past failure. Having failed in this and failed to receive his discharge by such further proceedings as were contemplated, the plaintiffs are entitled to their bond, and to that end it is respectfully submitted that the judgment of the Supreme Court must be reversed with costs and all the proceedings set aside.

FREEMAN WOODBRIDGE,
Attorney for Plaintiffs in Error.

New Jersey Court of Errors and Appeals. 10

THOMAS STOKES AND BERTRAM
STOKES, Partners, &c., trading
Thomas Stokes & Son,

Plaintiffs in Error,

vs.

ALBERT HARDY,

Defendant in Error.

In Error to
Supreme Court.

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CASE.

FREEMAN WOODBRIDGE,

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Attorney for Plaintiffs in Error.

A. V. DAWES,

Attorney for Defendant in Error.

WRIT OF ERROR.

New Jersey, ss.

The State of New Jersey to the Chief Justice
(L.S.) and the other Justices of our Supreme Court
of Judicature. Greeting:

For as much as in the record and proceedings and
also in the giving of judgment in a certain plaint which
was in our Supreme Court of Judicature before you,
10 between Thomas Stokes and Bertram Stokes, partners,
trading as Thomas Stokes & Son, Plaintiffs in Cer-
tiorari, and Albert Hardy, Defendant in Certiorari, on
a certiorari issued out of our said Supreme Court to
the Inferior Court of Common Pleas of the County of
Middlesex, as is said, manifest error hath intervened to
the great damage of the said Thomas Stokes and Bert-
ram Stokes, partners, trading as Thomas Stokes & Son,
as by their complaint we are informed, we being willing
20 that the error, if any there be, should in due manner be
corrected and full and speedy justice be done to the
parties aforesaid in this behalf, do command you that
if the judgment be thereupon given, then you send dis-
tinctly and openly under your seal the record and pro-
ceedings and the plaint aforesaid, with all things touch-
ing and concerning the same, to our Court of Errors
and Appeals, in the last resort in all causes, at Trenton,
on Tuesday, the twenty-ninth day of May, instant
(1906), together with this writ, that the record and
30 proceedings aforesaid being inspected we may cause
to be done thereupon what of right and according to
law ought to be done.

Witness, William J. Magie, Esq., our Chancellor and
President Judge of our said Court of Errors and Ap-
peals, at Trenton aforesaid, this tenth day of May, in
the year nineteen hundred and six (1906).

S. D. DICKINSON,

Clerk.

FREEMAN WOODBRIDGE,

Attorney.

(Endorsement.)

New Jersey Supreme Court.

THOMAS STOKES AND BERTRAM STOKES, partners, trading as Thomas Stokes & Son, <i>Plaintiffs in Error,</i>	}	In Error to Supreme Court.	10
vs.			
ALBERT HARDY, <i>Defendant in Error.</i>			

WRIT OF ERROR.

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FREEMAN WOODBRIDGE,
Attorney for Plaintiffs in Error,
391 George Street,
New Brunswick, N. J.

Filed May 19, 1906.

S. D. DICKINSON,
Clerk.

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The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made with all things touching and concerning the same, we do certify to the Court of Errors and Appeals in said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE (L.S.)
Clerk,

WRIT OF CERTIORARI.

New Jersey, ss.

The State of New Jersey to the Judge of the
(L.S.) Inferior Court of Common Pleas in and for
the County of Middlesex. Greeting:

We being willing for certain reasons to be certified
of a certain order lately made by you in the Inferior
Court of Common Pleas of the County of Middlesex,
10 on the twenty-fifth day of April, in the year nineteen
hundred and five (1905), wherein and whereby it was
ordered that Albert Hardy be discharged as an insol-
vent debtor, pursuant to certain proceedings by the
said Albert Hardy in that behalf theretofore taken in
said Court, with all things touching and concerning the
same, do hereby command you that the said order, to-
gether with all things touching and concerning the
same, as fully and entirely as before you they remain,
you distinctly and openly certify and send under your
20 hand and seal, to the Justices of our Supreme Court of
Judicature, at Trenton, on the sixteenth day of Octo-
ber next, nineteen hundred and five (1905), together
with this writ, that we may cause to be done thereon
what of right and justice and according to law we shall
see fit to be done.

Witness, William S. Gummere, Esquire, Chief Justice
of our Supreme Court at Trenton aforesaid, this
twenty-eighth day of September, in the year nineteen
hundred and five (1905).

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FREEMAN WOODBRIDGE,

WILLIAM RIKER, JR.,
Clerk.

Attorney.

(Endorsement.)

New Jersey Supreme Court.

THOMAS STOKES AND BERTRAM STOKES, partners, trading as Thomas Stokes & Son, <i>Prosecutors,</i>	}	Writ of Certiorari.	10
vs. ALBERT HARDY, <i>Defendant in Certiorari.</i>			

Returnable October 16th, 1905.

FREEMAN WOODBRIDGE,
 Attorney for Plaintiffs,
 391 George Street,
 New Brunswick, N. J.

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I allow this writ.

Let it be sealed.

J. FRANKLIN FORT,
 J. S. C.

Sept. 28, 1905.

To the Honorable the Chief Justice and Associate
Justices of the Supreme Court:

The record and proceedings whereof mention is with-
 in made, as well as our order aforesaid as the records, 30
 petitions and orders had and given in the Court of Com-
 mon Pleas of the County of Middlesex, with all things
 touching and concerning the same as fully and entirely
 as they remain in our said Court of Common Pleas, I
 do certify and send under my seal in this schedule here-
 to annexed, as within I am commanded.

WOODBRIDGE STRONG (L.S.)

Filed October 13, 1905.

Judge.

WM. RIKER, JR., Clerk.

To the Court of Common Pleas in and for the County of Middlesex:

The petition of Albert Hardy of New Brunswick, New Jersey, respectfully shows that your petitioner was arrested by William Carman, Sheriff of the County of Middlesex, upon an execution issued against him at the suit of Thomas Stokes and Son, in an action upon contract by the Circuit Court in and for said County, and was in the custody of said Sheriff in actual confinement
 10 in the Common Jail in and for the said County of Middlesex, for upwards of four months and until April 2, 1903, when he made out and delivered to the said Sheriff an inventory under oath and did give bond to the said Thomas Stokes and Son, with sufficient security pursuant to the provisions of the act entitled "An act for the relief of persons imprisoned on civil process," and is willing to deliver up to his creditors all his estate both real and personal, a full and true inventory of his
 20 deeds, bonds, notes, books of account, vouchers and securities whatsoever, together with a list of all his creditors with the money due and owing to each of them, to the best of his knowledge, to wit:

LIST OF PROPERTY.

No real estate.
 One parlor carpet (Tapestry, about 30 yards).
 1 parlor suit, 5 odd pieces.
 5 pictures in hardwood and gilt frames.
 30 5 marble clocks.
 2 rugs.
 1 parlor stand.
 1 dining-room set, consisting of four chairs, 1 table,
 1 sideboard.
 1 plush covered couch or lounge.
 1 tapestry carpet, about 40 yards.
 1 kitchen table.
 4 cane seat chairs.
 1 parlor heater.
 1 kitchen stove.

1 bedroom heater.
 1 ice-box or chest.
 1 bedroom set, consisting of 4 pieces, cherry.
 1 bedroom suit, consisting of 3 pieces, walnut.
 Bedroom carpet.
 Hall carpet.
 Matting for floors.
 1 bedroom lounge.
 1 cherry chiffonier, subject to chattel mortgage.

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LIST OF CREDITORS.

John Whitehead, Washington, S. R., \$1,000.
 Matthew Daly, New Brunswick, N. J., \$225.00.
 Thomas Stokes & Son, New York City, about \$600.
 C. N. Bastedo, New Brunswick, N. J., about \$55.
 Noah Runyon, Stelton, N. J., abt. \$50.00.
 Thomas Hardy, New Brunswick, N. J., abt. \$230.00.
 John H. Rolfe, New Brunswick, N. J., abt. \$11.00.
 Nathan Allen, New Brunswick, N. J., abt. \$100.00.
 William Cooper, New Brunswick, N. J., abt. \$7.00. 20
 Samuel Spitz, New Brunswick, N. J., abt. \$15.00.
 Frank Banker, New Brunswick, N. J., abt. \$500.00.
 Dr. Williamson's estate, abt, \$22.00.
 A. Vermeule's estate, abt. \$50.00.
 American Steam Laundry, abt. \$9.00.
 Mrs. C. Voorhees, New Brunswick, N. J., abt.
 \$175.00.
 Frederick Davenport, Englishtown, N. J., abt. \$9.00.
 Your petitioner, therefore, prays the benefit of the
 insolvent laws of this State, and that the Court will 30
 cause the time and place at which they will attend and
 hear what can be alleged for or against my liberation,
 according to the form of the statute in such case made
 and provided.

Dated April 6, 1903.

ALBERT HARDY.

*State of New Jersey,
Middlesex County, ss.*

Albert Hardy, above named, being duly sworn according to law on his oath, saith that the foregoing petition is in all things just and true and that it contains a true and perfect inventory of all his goods and chattels, rights and credits, lands, tenements and hereditaments and real estate, and also a correct list of his credit-
10 ors.

ALBERT HARDY.

Sworn to and subscribed before me, this 6th day of April, A. D. 1903.

GEORGE BERDINE,
M. C. C. of N. J.

MIDDLESEX* COMMON PLEAS.

20

In the matter of

The Insolvency of

ALBERT HARDY.

} Order.

30

The said Albert Hardy having presented his petition to this Court, praying among other things that this Court will name a time and place at which they will attend and hear what can be alleged for or against his discharge, according to the force of the statute in such case made and provided. The Court hereby appoints and names Monday, the seventh day of December, A. D. 1903, at the hour of 10.30 o'clock in the forenoon, at the Court House in said County, as the time and place at which they will attend to hear what can be alleged for or against the liberation of said Albert Hardy.

Dated September 14, 1903.

LOUIS H. SCHENCK, Judge.

(Endorsement on Petition and Order.)

MIDDLESEX COMMON PLEAS.

In the matter of

The Insolvency of

ALBERT HARDY.

10

Filed April 7, 1903.

Continued until April 14, 1903.

L. H. SCHENCK, J.

Continued until April 20, 1903.

L. H. SCHENCK, J.

Continued until September 14, 1903.

L. H. SCHENCK, J.

Filed November 30, 1903.

20

JOHN H. CONGER, Clerk.

AFFIDAVIT OF PUBLICATION.

State of New Jersey,
Middlesex County, ss.

W. B. Prickett, of full age, being duly sworn on his oath, saith that he is manager of the *New Brunswick Press*, a newspaper published in the City of New Brunswick, Middlesex County and State of New Jersey, and that a notice of which the annexed is a true copy was published in said paper for the term of six times, once in each week successively, commencing on the fifth day of November, 1903.

W. B. PRICKETT.

Sworn and subscribed before me this seventh day of December, A. D. one thousand nine hundred and three.

GEORGE J. LITTERST,
Notary Public.

NOTICE.

To John Whitehead, Matthew Daly, Thomas Hardy, Thomas Stokes and Bertram Stokes, partners, trading as Thomas Stokes & Son, C. N. Bastedo, Noah Runyon, John H. Rolfe, Nathan Allen, William Cooper, Frederick Davenport, Samuel Spitz, Frank Banker, Edward Hingher, Dr. Williamson's Estate, A. Vermeule's Estate, American Laundry, Mrs. C. Voorhees: You are hereby notified that I have presented a petition to the

10 Court of Common Pleas of the County of Middlesex, according to the form of the statute in such case made and provided for the benefit of the insolvent laws of this State, and the said Court have appointed Monday, December 7, A. D. 1903, at 10.30 o'clock in the forenoon, at the Court House in the City of New Brunswick, in said County, as the time and place at which they will attend to hear what can be alleged for or against my liberation.

Dated September 14, 1903.

20

ALBERT HARDY.

*State of New Jersey,
Middlesex County, ss.*

30 Furman Hardy, of full age, on his oath saith that on the seventh day of November, A. D. nineteen hundred and three, he served a notice of which the annexed is a true copy, on personally each of the following persons, to wit: Noah Runyon, Samuel Spitz, and Adrian Vermuele, executor of the Vermeule estate, by leaving with each of them a true or original copy thereof. That on the eighth day of November, A. D. nineteen hundred and three, he served a notice of which the annexed is a true or original copy on personally each of the following named persons, to wit: John Whitehead, by leaving at his residence with a person above the age of fourteen years; Matthew Daly, Thomas Hardy, John H. Rolfe, Nathan Allen, William Cooper, Frank Bank-

er, Edward Hingher, American Laundry, by George McClure, manager, Mrs. C. Voorhees, by leaving with each of them a true original copy.

FORMAN HARDY.

Sworn and subscribed before me, this 5th day of December, A. D. 1903.

GEORGE BERDINE,
M. C. C. of N. J.

10

State of New Jersey,
Middlesex County, ss.

George Berdine, of full age, being duly sworn according to law on his oath, saith that on the seventh day of November, A. D. 1903, he served a notice of which the annexed is a true copy on personally on the following persons, to wit:

Freeman Woodbridge, attorney for said Thomas 20
Stokes & Sons, the plaintiff in the proceedings therein referred to, who do not reside in the State of New Jersey; W. E. Florance, one of the executors of Dr. Williamson; George S. Silzer, attorney for said John Whitehead, and by registration November 6, 1903, on Frederick Davenport, receipt for which is hereto annexed and forms a part hereof.

GEORGE BERDINE.

Sworn and subscribed before me, December 7, A. D. 1903.

30

H. B. Cook,
M. C. C. of N. J.

MIDDLESEX COMMON PLEAS.

In the matter of

ALBERT HARDY,

An Insolvent Debtor.

} Order, &c

- 10 Albert Hardy, now in actual confinement in the Common Jail of the said County, upon an execution issued out of the Middlesex County Circuit Court, at the suit of Thomas Stokes & Sons against said Albert Hardy, and he having made application to this Court for the benefit of the insolvent laws of this State, and the Court having appointed the time and place to hear what could be said for or against his liberation, and the said Albert Hardy having now appeared and exhibited an account and inventory agreeably to the provisions of said
- 20 act, and the Court having proceeded to hear, consider and examine into the truth and fairness of said account and inventory and proof being made that due notice had been given to the creditors of the said Albert Hardy of the time and place, to wit: March 24, 1903, of the hearing, and such hearing by the said creditor's motion been adjourned to this day, and upon this day the said Albert Hardy being examined on oath and in open
- 30 Court on interrogatories proposed by the Court, or under its direction, according to the form of the statute in such case made and provided, and the Court, and no creditors attending except Freeman Woodbridge, attorney for plaintiff, who alone appeared protesting against the proceedings, being satisfied that the conduct of the said Albert Hardy has been fair, upright and just.

It is by the Court ordered that the said Albert Hardy be discharged from confinement on account of any debts by him personally contracted, pursuant to the provisions of the above mentioned act.

WOODBIDGE STRONG,
Judge.

Common Pleas Minutes, Book 8, page 340.

MIDDLESEX COMMON PLEAS.

Court met December 7, 1903.

Present Hon. Woodbridge Strong.

In the matter of the application of
ALBERT HARDY, an Insolvent
Debtor.

GEORGE BERDINE, Attorney for Applicant.

10

The above entitled matter coming on to be heard by the Court, George Berdine moved for the discharge of the above named debtor. Freeman Woodbridge appeared and objected on the ground that the papers had not been filed, and moved to dismiss the proceedings. Motion denied.

Counsel Woodbridge only appeared for the purpose of objecting as aforesaid.

Albert Hardy was thereupon sworn.

20

The Court having heard the evidence, &c., do order that the said Albert Hardy be discharged as an insolvent debtor.

New Jersey Supreme Court.

February Term, 1905.

THOMAS STOKES, ET AL., partners,
etc., as Thomas Stokes & Son,
Plaintiffs in Certiorari,
vs.
ALBERT HARDY,
Defendant in Certiorari.

30

On Certiorari.
Rule Affirming
Order, &c.

The judgment of this Court heretofore entered in the above stated cause having been reversed, set aside and for nothing holden by the Court of Errors and Appeals, and said Court having directed that a judgment be

entered in this Court in accordance with the remittitur in said cause :

It is, therefore, ordered that the order and proceedings of the Inferior Court of Common Pleas of the County of Middlesex, removed to this Court for review by the writ of certiorari in the above stated cause, be affirmed in all respects, except so much thereof as discharged the defendant in certiorari from imprisonment and that
 10 so much of said order as discharged the said defendant in certiorari from imprisonment be annulled with costs.

It is further ordered that the record in said cause be remitted to the Inferior Court of Common Pleas of the County of Middlesex, to be there further proceeded with according to law. Entered April 17th, 1905.

On motion of GEORGE BERDINE,

Attorney.

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing
 20 is a true copy of a rule made by said Court in the above stated cause and entered in the minutes thereof.

In testimony whereof I have set my hand and seal of said Court at Trenton, this eighteenth day of April, A. D. nineteen hundred and five.

(L.S.)

WM. RIKER, JR., Clerk.

New Jersey Supreme Court.

30

THOMAS STOKES, ET AL., partners,
 &c.,

vs.

ALBERT HARDY,

REMITTUR, &c.

Filed May 11, 1905.

J. H. CONGER, Clerk.

MIDDLESEX COMMON PLEAS.

In the matter of

ALBERT HARDY,

An Insolvent Debtor.

The order and proceedings hertofore had in the above cause having been removed into the Supreme Court by certiorari, and the Supreme Court having by its judgment affirmed in all respects the proceedings and order of this Court, except inasmuch as discharged Albert Hardy from imprisonment and to that extent annulled the said order and remitted into this Court the record to be further proceeded with according to law, and the said record having been now remitted into this Court, on the day of April, 1905, and the said Albert Hardy having duly appeared in person at this term of the said Court, and being now in person before the Court, and this Court upon the said hearing, consideration and examination of the proofs and allegations of said debtor (no creditor appearing except plaintiff, and they appearing only for the purpose of objecting to the jurisdiction of the Court, which objection having been overruled they withdrew), having been satisfied that the conduct of said debtor was and has been in all respects fair and just, and he having executed an assignment of his real and personal estate to Frank Mulvey, the assignee appointed by the Court, which assigned has been filed by the clerk: 10 20 30

It is, therefore, on the twenty-fifth day of April, A. D. 1905, ordered that said Albert Hardy be discharged from confinement on account of any debt previously contracted, pursuant to the provisions of the above mentioned act.

WOODBIDGE STRONG,
Judge.

MIDDLESEX COMMON PLEAS.

In the matter of
 ALBERT HARDY,
 An Insolvent Debtor

ORDER DISCHARGING INSOLVENT.

10 Filed May 11th, 1905.

J. H. CONGER, Clerk.

20 Know all men by these presents, that I, Albert Hardy, of Raritan Township, Middlesex County, New Jersey, a petitioner to the Court of Common Pleas of the County of Middlesex, for the benefit of the insolvent laws, do pursuant to the said laws and the consideration of fifty cents to me paid by Frank Mulvey, of New Brunswick, N. J., grant and assign unto the said Frank Mulvey, the assignee by said Court appointed, all my real and personal estate wheresoever and whatsoever, except only such articles as the Court may designate I may be entitled to retain.

To have and to hold unto the said Frank Mulvey, his heirs and assigns in trust, for the benefit of my creditors, according to the form of the statute in such case made and provided.

30 In witness whereof I have hereunto set my hand and seal this twenty-fifth day of April, A. D. nineteen hundred and five.

ALBERT HARDY (L.S.)

Signed, sealed and delivered in the presence of
 GEORGE BERDINE.

State of New Jersey,
Middlesex County, ss.

Be it remembered, that on the 25th day of April, A. D. nineteen hundred and five, before me, a Master in Chancery of New Jersey, personally appeared the within named Albert Hardy, who I am satisfied is the grantor within named, and I having first made known to him the contents of the within instrument, he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

10

GEORGE BERDINE,
M. C. C. of N. J.

Middlesex County, ss.

I, Frank Mulvey, do solemnly swear that I will well and faithfully manage the insolvent's estate above assigned to me and keep and render a true account of all that shall come to my hands of the same, so help me God.

FRANK MULVEY. 20

Sworn to and subscribed before me, on this 25th day of April, 1905.

GEORGE BERDINE,
M. C. C. of N. J.

MIDDLESEX COMMON PLEAS.

In the matter of Albert Hardy, 1468
an Insolvent Debtor.

675

30

DEED TO ASSIGNEE AND ASSIGNEE'S OATH.

Albert Hardy
to
Frank Mulvey.

Filed May 11, 1905.

JOHN H. CONGER, Clerk,

*State of New Jersey,
Middlesex County, ss.*

I, John H. Conger, Clerk of the Court of Common Pleas of the County of Middlesex, do hereby certify that the foregoing is a true, full and correct copy of the records, proceedings and papers in the foregoing case, as the same are on file in my office.

In witness whereof I have here unto set my
10 (L.S.) hand and affixed the seal of said Court and County, this 12th day of October, A. D. 1905.

JOHN H. CONGER, Clerk.

New Jersey Supreme Court.

20

THOMAS STOKES AND BERTRAM
STOKES, Partners, trading as
Thomas Stokes & Son,
Plaintiffs in Certiorari,
vs.
ALBERT HARDY,
Defendant in Certiorari.

On Certiorari.
Reasons.

And the said plaintiffs in certiorari, by Freeman Woodbridge, their attorney, come and pray that the
30 order made in the Inferior Court of Common Pleas of the County of Middlesex, bearing date the twenty-fifth day of April, nineteen hundred and five (1905), wherein and whereby the said Albert Hardy was discharged as an insolvent debtor, pursuant to the proceedings theretofore instituted by him for such discharge, together with the said proceedings in all things may be reversed, set aside and for nothing holden, for the following reasons, to wit:

First.—Because the said Albert Hardy, the petitioner, did not appear before the Court of Common

Pleas of the County of Middlesex at each and every subsequent term of Court from the date of filing his said petition until discharged as an insolvent debtor by said order, as required by the statute in such case made and provided, and that thereby the Court was without jurisdiction to make the order of discharge on the said proceedings.

Second.—Because the affidavit to the petition was taken by the attorney for the applicant, contrary to law.

Third.—Because the Court of Common Pleas of the County of Middlesex did not name, as required by the 10 statute, the time and place at which it would attend to hear what could be alleged for or against the said liberation of the debtor, as required by the statute in such case made and provided, or fix any time and place for the making of its said order within the time limited by the statute, or at any time.

Fourth.—Because the said debtor did not cause notice in writing at least thirty days prior to such time and place to be served upon the plaintiffs or their attorney, or upon any of the creditors or their or any of 20 their attorneys.

Fifth.—Because the said debtor did not have such notice as is mentioned in the last foregoing reason published, as required by law or the statute.

Sixth.—Because no proof was presented to the Court of Common Pleas at the time of the making of its said order of the giving or publication of such notice, as is required by the statute, and because no such proofs were filed with the said Court.

Seventh.—Because it did not appear in the order for 30 discharge that the debtor was examined touching and concerning the disposition of his estate, as required by the statute in such case made and provided.

Eighth.—Because it did not appear in the order for discharge that the debtor was examined touching the truth and fairness of his inventory and account, as required by the statute.

Ninth.—Because it did not appear in the order for discharge that the debtor was examined touching his

confinement or whether his imprisonment was compulsory or voluntary.

Tenth.—Because at the time of the making of the said order, to wit: on the twenty-fifth day of April, nineteen hundred and five (1905), the said Court of Common Pleas was without jurisdiction to proceed with the hearing or to take any proceedings thereunder because the said cause had been removed to the Supreme Court by writ of certiorari and the remittitur
 10 from the supreme Court had not at the date of making of said order been filed in the said Court of Common Pleas.

Eleventh.—Because the said order of discharge of the Court of Common Pleas was not filed or entered within the time required by law or the rules or practice of the courts with the clerk of the said Court of Common Pleas.

Twelfth.—Because the assignment made by the said Albert Hardy to Frank Mulvey, the assignee, was not
 20 filed with the Clerk of said Court prior to the making of the said order of discharge, nor within the time required by law.

Thirteenth.—Because the affidavit of the assignee to the said assignment was taken by the attorney for the applicant, contrary to law.

Fourteenth.—Because the said plaintiffs, nor any of the creditors, did not have any opportunity on the said proceedings to attend and examine the said debtor or be satisfied that the conduct of the debtor touching
 30 the matters and things set forth in his petition and proceedings, the truth and fairness of his inventory and account, or to conduct such an examination as would justify them that the conduct of said debtor was fair, upright and just, as required by the statute.

Fifteenth.—And for various other reasons which may appear by the said return.

Wherefore, the said plaintiffs in certiorari pray that by reason of the said defects appearing in the said order and the said proceedings and record and for various other reasons and defects which may appear

therein, that the said order and the said proceedings be in all things reversed, set aside and for nothing holden.

FREEMAN WOODBRIDGE,
Attorney for Plaintiffs in Certiorari.

Filed October 18th, 1905.

WM. RIKER, JR., Clerk.

OPINION.

10

New Jersey Supreme Court.

STOKES, ET AL.

v.

HARDY.

Supreme Court of New Jersey, Feb. 26, 1906.

20

When the record of a cause removed from the Common Pleas to the Supreme Court by certiorari has been actually remitted by the Supreme Court to the Common Pleas for further proceedings, the latter Court has authority to proceed therein, even though the formal order to remit has not been filed with its clerk.

The file mark of the clerk of the Court will not countervail a recital by the Court itself as to the filing of the the paper upon which the order containing the recital is based. (Syllabus by the Court.)

30

Certiorari by Thomas Stokes and others against Albert Hardy, to review an order discharging defendant as an insolvent debtor. Affirmed.

Argued November term, 1905, before Garrison, Swayze and Dixon, JJ.

Freeman Woodbridge, for Prosecutor.

DIXON, J. The certiorari in this case brings up an order of the Middlesex Common Pleas made April 25, 1905, discharged the defendant as an insolvent debtor

under the proceedings of that Court which had been reviewed by the Court of Errors in *Stokes v. Hardy*, 60 Atl. 403. The proceedings then before the Court of Errors were those leading up to and including an order for the discharge of the debtor, and the remittitur which came to the Common Pleas from the Supreme Court in pursuance of the judgment of the Court of Errors declared that all of those proceedings should be affirmed, except so much as discharged the defendant
 10 from imprisonment, and directed that so much of said order should be reversed and the record remitted to the Common Pleas to be proceeded on according to law. According to that judgment, as explained by the opinion of the Court in 60 Atl. 404, the only illegality in the proceedings of the Common Pleas was in discharging the debtor before he had made due assignment of his property. The affirmance of the other proceedings required such discharge to be ordered when due assignment was made.

20 In view of this remittitur the first nine reasons and the fourteenth reason now presented for the reversal of the present order are precluded by the judgment of the Court of last resort. The tenth reason assigned for reversal is that the remittitur has not been filed in the Court of Common Pleas when the order for discharge was made. The only evidence of this is the file mark of the clerk of the Common Pleas. The order of the Court recites that the record had been previously remitted from the Supreme Court to the Common Pleas,
 30 and this record was sufficient to enable the Common Pleas to proceed, even though the remittitur itself had not been filed with its clerk. The eleventh reason is that the order for the debtor's discharge was not filed within the time required by law or the rules of the Court. We know of no law or rule of the Common Pleas to support this reason. The twelfth reason is that the assignment executed by the debtor was not filed with the clerk before the making of the order for his discharge. The insolvent debtors' act (Gen. Stat. p. 1729, S. 11), directs that, on making the assignment

and filing it in the clerk's office, the Court may by writing under their hands and seals direct the discharge of the debtor. No such writing appears in the present case. But the Court of Errors in the opinion above mentioned seems to have regarded an order to discharge entered in the minutes as the legal equivalent. The order now before us recites that the assignment had been previously filed by the clerk, and we cannot regard the file mark of the clerk as countervailing this declaration of the Court itself. That mark is not essential to the filing, which is complete when the paper is properly deposited with the clerk (*Hunter v. Caldwell*, 10 Q & B., 69), and the file mark is only presumptive evidence of the date of filing (8 Enc. Pl. & Pr. 927). The thirteenth reason is because the affidavit of the assignee to the assignment was taken before the attorney of the debtor. Section 22 of the insolvent debtors' act requires this oath to be taken immediately after the assignment is made, but it is not an essential preliminary to the order for discharge.

We find no sufficient reason for the reversal of the order, and it is affirmed, with costs.

New Jersey Supreme Court.

February Term, 1906.

THOMAS STOKES, ET ALS.

Prosecutors,

vs.

ALBERT HARDY,

Defendant.

On Certiorari.
Rule of
Affirmance.

This case having been argued at the November Term of this Court by Freeman Woodbridge, for the prose-

cutors, and by A. V. Dawes, for the defendant, and the Court having inspected the record and finding no error in the proceedings of the Court of Common Pleas of the County of Middlesex.

It is ordered that the order and proceedings of the said Court of Common Pleas certified to this Court be in all things affirmed with costs.

Entered March 7, 1906.

On motion of GEORGE BERDINE,
10 Attorney for Defendant.

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule made by said Court in the above stated cause and entered in the minutes thereof.

In testimony whereof I have set my hand
20 (L.S.) and the seal of the said Court, at Trenton,
this sixteenth day of May, A. D. nineteen
hundred and six.

WM. RIKER, JR.,
Clerk.
Filed May 19, 1906.

S. D. DICKINSON,
Clerk.

New Jersey Court of Errors and Appeals.

THOMAS STOKES AND BERTRAM	} In Error to Supreme Court. Assignment of Errors.	10
STOKES, partners, trading as		
Thomas Stokes & Son,		
<i>Plaintiffs in Error,</i>		
vs.		
ALBERT HARDY,		
<i>Defendant in Error.</i>		

And afterwards, to wit, on the twenty-ninth day of May, in the year nineteen hundred and six (1906), in the Court of Errors and Appeals of the State of New Jersey, comes the said Thomas Stokes and Bertram Stokes, partners, trading as Thomas Stokes & Son, by Freeman Woodbridge, their attorney, and say that in the record and proceedings aforesaid and also in the giving of the judgment aforesaid there is manifest error in this, to wit: 20

First.—Because the judgment of the Supreme Court was given for the said Albert Hardy, affirming the proceedings had and given in the Inferior Court of Common Pleas in and for the County of Middlesex, and the order discharging the said Albert Hardy, bearing date the eleventh day of May, nineteen hundred and five, whereas, by the law of the land, judgment ought to have been given in favor of the said Thomas Stokes and Bertram Stokes, partners, trading as Thomas Stokes & Son, reversing the order of discharge aforesaid and the proceedings below. 30

Second.—And in this, because the Supreme Court affirmed the said proceedings and order had and given in the Inferior Court of Common Pleas of the County of Middlesex, whereas the said proceedings and order should have been reversed because the said Albert Hardy, the petitioner, did not appear before the Court of Common Pleas of the County of Middlesex at each and every sub-

sequent term of Court from the date of filing his petition until discharged as an insolvent debtor, as required by the statute in such case made and provided, and thereby the said Court of Common Pleas was without jurisdiction to make the order of discharge on the said proceedings.

10 Third.—And in this, because the Supreme Court affirmed the said proceedings and order had and given in the Inferior Court of Common Pleas of the County of Middlesex, whereas, the said proceedings and order
20 should have been reversed, because the Court of Common Pleas of the County of Middlesex did not name, as required by the statute, the time and place at which it would attend to hear what could be alleged for or against the said liberation of the debtor, as required by the statute in such case made and provided, or fix any time and place for the making of its said order within the time limited by the statute, or at any time.

20 Fourth.—And in this, because the Supreme Court affirmed the said proceedings and order had and given in the Inferior Court of Common Pleas of the County of Middlesex, whereas, the said proceedings and order should have been reversed, because the said debtor did not cause notice in writing at least thirty days prior to such time and place to be served upon the plaintiffs or their attorney, or upon any of the creditors or their or any of their attorneys.

30 Fifth.—And in this, because the Supreme Court affirmed the said proceedings and order had and given in the Inferior Court of Common Pleas of the County of Middlesex, whereas, the said proceedings and order should have been reversed, because the said debtor did not have such notice as is mentioned in the last foregoing reason published, as required by law or the statute.

Sixth.—And in this, because the Supreme Court affirmed the said proceedings and order had and given in the Inferior Court of Common Pleas of the County of Middlesex, whereas, the said proceedings and order

should have been reversed, because no proof was presented to the Court of Common Pleas at the time of the making of its said order of the giving or publication of such notice, as is required by the statute, and because no such proofs were filed with the said Court.

Seventh.—And in this, because the Supreme Court affirmed the said proceedings and order had and given in the Inferior Court of Common Pleas of the County of Middlesex, whereas, the said proceedings and order should have been reversed, because it did not appear in the order for discharge that the debtor was examined touching and concerning the disposition of his estate, as required by the statute in such case made and provided. 10

Eighth.—And in this, because the Supreme Court affirmed the said proceedings and order had and given in the Inferior Court of Common Pleas of the County of Middlesex, whereas, the said proceedings and order should have been reversed, because it did not appear in the order of discharge that the debtor was examined touching the truth and fairness of his inventory and account, as required by the statute. 20

Ninth.—And in this, because the Supreme Court affirmed the said proceedings and order had and given in the Inferior Court of Common Pleas of the County of Middlesex, whereas, the said proceedings and order should have been reversed, because it did not appear in the order of discharge that the debtor was examined touching his confinement or whether his imprisonment was compulsory or voluntary. 30

Tenth.—And in this, because the Supreme Court affirmed the said proceedings and order had and given in the Inferior Court of Common Pleas of the County of Middlesex, whereas, the said proceedings and order should have been reversed, because at the time of the making of the said order, to wit, on the twenty-fifth day of April, nineteen hundred and five (1905), the said Court of Common Pleas was without jurisdiction to proceed with the hearing or to take any proceedings thereunder because the said cause had been removed to

the Supreme Court by writ of certiorari and the remittitur from the Supreme Court had not at the date of making of said order been filed in the said Court of Common Pleas.

Eleventh.—And in this, because the Supreme Court affirmed the said proceedings and order had and given in the Inferior Court of Common Pleas of the County of Middlesex, whereas, the said proceedings and order should have been reversed, because the said order of discharge of the Court of Common Pleas was not filed
10 or entered within the time required by law or the rules or practice of the courts with the clerk of the said Court of Common Pleas.

Twelfth.—And in this, because the Supreme Court affirmed the said proceedings and order had and given in the Inferior Court of Common Pleas of the County of Middlesex, whereas, the said proceedings and order should have been reversed, because the assignment made by the said Albert Hardy to Frank Mulvey, the assignee, was not filed with the clerk of said Court
20 prior to the making of the said order of discharge, nor within the time required by law.

Thirteenth.—And in this, because the Supreme Court affirmed the said proceedings and order had and given in the Inferior Court of Common Pleas of the County of Middlesex, whereas, the said proceedings and order should have been reversed, because the affidavit of the assignee to the said assignment was taken by the attorney for the applicant, contrary to law.

Fourteenth.—And in this, because the Supreme Court
30 affirmed the said proceedings and order had and given in the Inferior Court of Common Pleas of the County of Middlesex, whereas the said proceedings and order should have been reversed, because the said plaintiffs, nor any of the creditors, did not have any opportunity on the said proceedings to attend and examine the said debtor to be satisfied that the conduct of the debtor touching the matters and things set forth in his petition and proceedings, the truth and fairness of his inventory and account, or to conduct such an examina-

tion as would satisfy them that the conduct of said debtor was fair, upright and just, as required by the statute.

Wherefore, the said Thomas Stokes and Bertram Stokes, partners, trading as Thomas Stokes & Son, Plaintiffs in Error, pray that the judgment of the Supreme Court aforesaid may be reversed, annulled and for nothing holden, and that they may be restored to all things which they have lost by occasion of said judgment.

10

FREEMAN WOODBRIDGE,
Attorney for Plaintiffs in Error.

Filed June 26, 1906.

Joinder in Common Form.

Filed July 11, 1906.

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