course, is not the case here; the case here is entirely different. Under these circumstances I think the appeal should be dismissed with costs.

1912. Sept. 6. Oct. 4. de Water *vs.* Muller.

CURLEWIS, J.: I concur.

[Appellant's Attorney, H. W. ADAMS. Respondent's Attorneys, ROUX & JACOBSZ.]

[Reported by GEY VAN PITTIUS, Esq., Advocate.]

MASON J. (In Chambers), 8th October, 1912.

Ex parte SELESNIK.

Insolvency.—Composition.—Costs of administration.—Payment of.—Rehabilitation.

The only creditor who proved in an insolvent estate was the insolvent's solicitor. At the third meeting of creditors the solicitor, who was the only creditor present, offered, on behalf of the insolvent to pay all the costs of administration in full settlement. This offer was accepted by the creditor and confirmed at a subsequent meeting at which the solicitor was again the only creditor present. The solicitor's claim was also paid in full. Held, *that there had been a composition in terms of sec.* 132 *of Law* 13 *of* 1895, *and that the insolvent was entitled to his rehabilitation immediately thereafter.*

Application for rehabilitation.

1912. Oct. 8. *Ex parte* Selesnik.

Applicant surrendered his estate as insolvent in March, 1912. According to the schedules filed by him his liabilities amounted to £1,091 0s. 3d., and his only asset consisted of an amount of £73 5s. 8d., recovered on account of certain outstanding book debts. The only claim proved against the estate was by insolvent's solicitor for the sum of £8 8s. which was paid in full. At the third meeting of creditors the following offer was made by a certain Mr. Gluckman—the insolvent's solicitor—"Mr. Gluckman makes an offer on behalf of the insolvent of payment of costs of the administration of the estate in full settle-

1912. Oct. 8 — *Ex parte* Selesnik.

ment." This offer was accepted by the said Mr. Gluckman, the only creditor present, and was finally accepted at a subsequent meeting of creditors held in June, 1912, where again Mr. Gluckman was the only creditor present. The applicant now applied for his rehabilitation on the ground that an offer of composition had been made by him and accepted by his creditors. The final liquidation and distribution account in the applicant's estate was confirmed in September, 1912.

Horace Kent, for the applicant.

MASON, J.: The insolvent in this case applies for rehabilitation. The application is made within less than six months after the final distribution of the estate, by virtue of an alleged composition which was accepted by the only creditor who proved in the estate. The composition was that the insolvent should pay the costs of the administration of the estate in full settlement of his liabilities. No other creditors except the insolvent's attorney proved in the estate. The composition was accepted at the third meeting of creditors in April, and was confirmed in June. The documents before me show that in all probability the assets would have been sufficient to pay the costs of administration at that time; but there is no definite proof that at that time the assets had been realised. There is also no definite proof—and indeed, I suppose, no real certainty—that subsequent claims might not arise in connection with the estate which might increase the costs of administration, and those the debtor undertook to guarantee. I am not prepared to hold that it is not a proper composition to offer to guarantee all the costs of administration. One can understand that in some cases there may be costs of administration far in excess of the value of any assets likely to be realised. Under these circumstances I have come to the conclusion that this is a composition coming within the words of the Insolvency Law. That being so, apparently, so far as I can judge, everything has been done in accordance with the strict letter of the statute. The composition has been accepted, the application for

rehabilitation has been duly advertised, and the debtor has paid all the creditors who have proved. The Master reports nothing in connection with the applicant's dealings with his affairs which would justify me in saying that there was any misconduct. Therefore it seems that —subject to one formal defect to which I shall refer later —the insolvent is entitled to rehabilitation. At the same time, a state of affairs has arisen in this case which seems somewhat undesirable. The attorney who presented the petition for surrender gets all his costs paid out of the sequestration—proves a claim of eight guineas, carries through the rehabilitation, and gets paid everything. The insolvent pays only his attorney. He gets the attorney to accept a composition. The result is that he comes out of the sequestration with some £20 in his pocket, leaving creditors with claims amounting to £1,000, who have not proved, entirely unpaid. But the law practically requires creditors to prove if they wish to get any benefit out of the estate, and the Court has no real power in the matter unless there has been some kind of misconduct or improper dealing by an insolvent. Under these circumstances, though with considerable reluctance, I shall grant rehabilitation, subject, however, to proper proof—which I do not doubt will be forthcoming—that notice was given to the trustee in due time. That proof can be filed with the Registrar.

[Attorneys for Applicant, WAGNER & KLAGSBRUN.]

[Reported by ADOLF DAVIS, Esq., Advocate.]