

by transferring his goods to them in a manner alleged to be preferential, but the instrument impeached did not require the creditors to submit to any conditions, and did not provide for a release of the debtor in any manner :

Held, the instrument could not be set aside, and the action must be dismissed with costs.

A distinction drawn between such a case as this and the American cases which embody the principle that a debtor shall not be allowed to dispose preferentially of part of his estate, and as part of the same scheme to turn over the remainder of it to trustees for creditors, by an instrument which provides for his discharge ; that, in fact, he cannot be allowed to coerce his creditors into an acceptance of the fragments of his estate as a satisfaction in full of their claims while he has disposed of other parts of his property to pay preferred creditors in full. Here the only effect of the deed was to vest the estate in the hands of a trustee for equal distribution, so that the whole might not be swept off upon a forced sale at the instance of an execution creditor.

The duties of assignees under such instruments as the one in question here are analogous to those of executors and trustees administering estates, and the Court will consider that a year is a proper time within which the sale of the property assigned, (when such sale is left by the instrument in the discretion of the assignee), is to be made. If not made within that time the *onus* will be cast on the assignee of satisfying the court of his *bona fides* in seeking further delay. Execution creditors cannot sell the land for a year, and a delay of that time cannot be said to prejudice them, and render such an assignment on that ground impeachable under the statutes of Elizabeth.

J. Bethune, Q.C., for the plaintiff.

Boyd, C.]

[Oct. 10.

MERCHANTS' BANK OF CANADA v. HANCOCK
ET AL.

Company—Raising Money on Warehouse Receipts—Ultra Vires—Locus standi of execution creditors—Directors.

Interpleader issue between the Merchants' Bank of Canada and certain execution creditors. The former claimed that they were entitled to

the property in question, which had been taken in execution, as security for certain advances made by them to the Hamilton Knitting Company, by virtue of certain warehouse receipts covering the said property, and delivered to and deposited with them by the said Hamilton Knitting Company, as security for such advances :

Held, the Hamilton Knitting Company could not have resumed possession of the goods without satisfying the bank's lien, and execution creditors had no higher rights as to property seized in execution than the original debtor. For, under the general act applicable to the Company, R.S.O. c. 150. (see secs 14, 28, 30, subs. 2,) the Company was enabled so to pass the property in the goods to the Bank, as security for advances made, and even if a by-law were, strictly speaking, requisite in such a case, yet, where no complaint had been made by the Company, or any of its shareholders, because of any irregularity or informality in what was done, an execution creditor could not be allowed to interfere, there being no imputation of fraud or illegality in its broad and culpable sense,

But, *semble*, apart from this, the depositing of goods in a warehouse, and the raising of money on the security thereof, seemed upon the evidence to have been an important constituent for the successful prosecution of the Company's business, and to be such a matter as would fall within the competence of the directors to cause to be done through their manager, as was the course of dealing in this case.

Boyd, C.]

[Oct. 10.

CULHANE v. STUART.

Following trust money—Earmark—Holder for value.

Where C., an insolvent, had assigned all his assets and stock-in-trade to S., as trustee for creditors, and the plaintiff claimed to be entitled to a specific lien upon the property so assigned to the extent of certain trust moneys, which he alleged had come into C.'s hands as trustee and executor under the will of his (the plaintiff's) father, but had been wrongfully converted by C. to his own use, and employed in his own business to pay his trading debts, but there did not appear any sort of identification or connection between the trust money thus used in pay-