

Cty. Ct.]

WALTON V. MURDOCK.—SAUNDERS V. RAYNER.

[Cty. Ct.]

his writ, and sending the money to the plaintiff's solicitors, retained the money realized in the above manner and entered in his book the notice required by sec. 5 of the Creditor's Relief Act. After the 29th April and up to 29th May following, being within one calendar month, about six other claims made by other creditors of the defendant, were placed in his hands under the provisions of the Act. The question as to the rights of the parties, and the correctness of the sheriff's action in the premises are contested in this motion.

Section 5 of the Creditor's Relief Act, reads as follows: "In case a sheriff levies any money upon an execution against the property of a debtor, he shall forthwith enter in a book to be kept in his office for inspection without charge, a notice stating that such levy has been made, and the amount thereof; and such money shall thereafter be distributed ratably amongst all execution creditors, and other creditors whose writs or certificates given under this Act, were in the sheriff's hands at the time of such levy or who shall deliver their writs or certificates to the said sheriff, within one calendar month from the entry of such notice," etc.

Section 7 of the Act is to the following effect: "That if a debtor permits an execution issued against him to remain unsatisfied after seizure to within two days of the time fixed for sale or for twenty days after seizure, etc., then proceedings may be taken by creditors to lodge their claims with the sheriff under the Act, in the manner set out in Act.

Sub-section 32 of sec. 7, is in the following words: "In case the debtor without any sale by the sheriff pays the full amount owing in respect of the executions and claims in the sheriff's hands at the time of such payment and no other claim has been served on the debtor or in case all executions and claims in the sheriff's hands are withdrawn, and any claims served are paid or withdrawn, no notice shall be entered as required by the 5th section of the Act, and no further proceedings shall be taken under this Act against the debtor by virtue of the executions having been in the sheriff's hands."

The first point to be determined is at what stage of the proceedings, where a writ of execution is placed in the sheriff's hands does it become incumbent upon him to enter the notice under the 5th section of the Act. After seizure, or after making the money upon his writ?

Now as I read the 5th section, the sheriff is not required to enter this notice at all until he has money in his hands made by him under and by virtue of proceedings under his writ, that is to say realized by means of a sale of the debtor's goods under his writ.

The words are "levies money upon an execution," and further, "such money shall thereafter be distributed," etc

Still more must this appear to be the meaning of the Act for sub-sec. 32, of sec. 7, expressly provides for the case of the debtor forestalling the action of the sheriff by paying the judgment debt and costs to him without a sale taking place under the writ. In such a case if there are no other claims in the sheriff's hands at the date of any such payment by the debtor it is expressly enacted that "no notice shall be entered as required by the 5th section of this Act."

It is quite true, that any creditor in this case could have commenced proceedings under the provisions of the Act, before the 29th April, because the debtor had allowed the writ to remain unsatisfied for more than twenty days after such seizure, (sec. 7) but so far as the affidavits and material before me show no steps were taken by any creditor prior to the payment by the debtor of the judgment debt and costs on the 29th April. The only writ or claim in the sheriff's hands at that date was the plaintiff's under his writ. I think it was the sheriff's duty to have returned the writ and money to the plaintiff forthwith and not to have made any entry of the notice required under section 5. All the claims which came in, came in subsequently and doubtless by reason of the sheriff's giving the notice under circumstances when the statute expressly says, he should not do so.

The language of the statute seems to me to be free from all reasonable doubt. The construction which I have placed upon it, is I venture to think, the only interpretation which will enable section 5 and sub-sec. 32 of sec. 7, to be read intelligibly together and at the same time render each clause operative, sensible and consistent, the one with the other.

I think the order should go, but proceedings thereunder may be stayed for one week. Unless the amount of the plaintiff's execution and the costs of this motion be paid by the sheriff to the plaintiff herein within that time, order to issue.

THIRD DIVISION COURT, COUNTY OF GREY.

SAUNDERS V. RAYNER.

*Equitable assignment of debt.*

Plaintiff sued as the holder of the following instrument, claiming that it had been delivered to him by M. for value: "I. O. U. the sum of sixty-eight dollars, value received to be paid on the first of March, 1884, (1/3/84) with interest at six per centum.

P. N. RAYNER."

Endorsed, "F. CAMPBELL."