

which is registered under the Act, but not executed by any of the creditors. Subsequently one of the creditors petitions to have C. appointed assignee in place of B., and an order is made appointing C. C. then proceeds to get in the estate, and has partially done so. One of the debtors, however, refuses to pay C., on the ground that his appointment as assignee is void, the Act being *ultra vires*. It seems quite clear that C. cannot recover the debt. Can B. then proceed to recover it without first taking steps to have the order appointing C. set aside? What is the position of B. with regard to moneys collected by C. and in his hands? Should he apply to have the order appointing C. set aside? The position of B. is an embarrassing one. As none of the creditors have executed the deed, it would appear that by *Garrard v. Lauderdale*, and *Johns v. Jones*, 8 Ch.D. 844, he is not responsible to them.

There is, however, considerable doubt as to what circumstances will render a deed irrevocable and create a trust in favour of creditors (see Lewin on Trusts, 8th edition, p. 515, *et. seq.*, where the cases are collected and discussed). B. is, however, without doubt, responsible to A. Is he, then, bound at the request of A. to take steps to execute his trust? or is he protected by the order superseding him? is he liable to A. for negligence if he does nothing? I can find no cases that throw any light on the subject; but perhaps you or some of your readers may know of some. My own opinion is that although the order superseding him is void, B. is not bound to apply to set it aside unless he wishes, and is not bound to take any steps to get in the estate. A., however, can apply to set the order aside, and if he does so the responsibility of B., as assignee, revives. I am,

Yours truly,

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