estate if execution creditors could be thus privileged, or that *such was the intention of the Legislature?* What he urges is, a strong reason for holding the assignment void as against the assignee in insolvency; and that is all that was decided in *Wilson* v *Cramp*, and if the effect of its being so avoided is to let in the execution, it is an unfortunate slip which will have to be remedied by the Legislature.

The Chief Justice founds his judgment if I understand his reasoning correctly, chiefly on the ground that our Insolvent Laws, differing in this respect from the Bankruptcy Laws of England, do not vest the property in the assignee by relation back to the act of Bankruptcy, but merely provide that the estate and effects of the insolvent *as existing at the date* of the issue of the writ of attachment shall vest in the assignee in the same manner, and to the same extent as if a voluntary assignment had *at that date* been executed in his favor.

For the purpose of the argument, I pass over the question of whether the first assignment was, or was not valid under the Indigent Debtors' Act, but assuming it to be good under that act, but invalidated under the Insolvent Act, is the effect of such avoiding to let in the intermediate execution?

The cases of *Graham* v. *Wetherly*, and *Graham* v. *Lewis*, 7 Q. B. 491, are referred to as the cases, the principles of the decision of which must dispose of this case.

The facts of those cases shortly were, that one Bennett placed a *fi. fa.* in the sheriff's hands against Seddons on a judgment obtained upon a warrant of attorney under which a seizure was made.

Whilst the sheriff was so in possession, another plaintiff, Wetherly, obtained a judgment in an adverse action, and placed a writ in the sheriff's hands; whilst the goods were unsold, a *fiat* in bankruptcy issued against Seddons, the goods were afterwards sold for an amount more than enough to cover Wetherly's writ but not sufficient to pay off Bennett's.

As between Bennett and Wetherly there was no question that Bennett was entitled to priority; but under the Bankrupt Act of Geo. IV., Bennett's judgment was fraudulent and void as against the assignee in bankruptcy; the question then arose, what would be the effect as to Wetherly's writ, and they held, that the moment the *fiat* in Bankruptcy issued, the sheriff was bound to treat the first writ as void. The moment he so treated it, the writ of the second execution creditor which had attached provisionally, became in effect the first writ.

By placing the assignments, argues the Chief Justice, in the place of Bennett's writ, we have a very clear analogy in principle to apply to the case before us, and a strong authority in favor of the defendants.

The fallacy of this reasoning appears to me to be this: in the English case the goods were bound by both writs—Bennett's first, unless something occurred to displace that priority—and subject thereto by Wetherly's. If, therefore, Bennett's writ was displaced or rendered void, the goods remained still the goods of the bankrupt, subject however to any existing lien, and subject to such lien vested in the assignee. In the case, however, under discussion, the execution never attached; the goods were never bound by it, and the very moment the assignment became void, that same moment did they vest in the assignee. The title of the first assignee was good against all the world except the assignee in insolvency, and inasmuch as the execution never could legally attach, there ceases to my mind, to be any analogy between the two cases.

Whilst on the subject of insolvency, it may not be amiss to make some reference to the Act of 1864, and its amendment, with a view to invite some discussion through your columns on the subject; and, first, as to the wording of the acts which could scarcely have been more ambiguously framed, had uncertainty been the special aim of its framers. No two lawyers can be found to agree upon many of its provisions, and a vast labour has been thrown upon our already overworked judges in the hearing of appeals, which, after all, can scarcely be as satisfactory as if there had been a Chief Judge in insolvency to whom appeals might have been made with powers to him in cases of intricacy and importance to state a case for the opinion of one or other of the full courts. If a first-class man were selected for this position he might also be a judge of the Court of Error and Appeal—a court which, as at present constituted, can scarcely be said to be satisfactory either to the profession or the country.

A case recently came by way of appeal before the Chief Justice of Upper Canada which illustrates the difficulty of putting a construction upon the acts in question, and the decision in which does not seem to be very clearly upheld by some of the clauses to which the learned judge refers.

The question was whether an insolvent applying for his discharge was bound to mail notices to creditors under section 11—the section referring to, and regulating proceedure generally—or whether the advertisement for two months under sub-section 6 of section 9 was sufficient. The learned judge in insolvency held that it was necessary to send notices by mail; that the true construction of section 11 was, that in cases where notices were required to be given by advertisement, two weeks notice in the *Official Gazette*, and in one newspaper, would in all cases be sufficient unless the act *specially designated the nature of the notice*, in which cases the advertisement instead of being for two weeks, and in a paper nearest to the place where the proceedings are being carried on would be for the period and in the mode so designated; but