

See *Soper v. Pulos*, ante 1258.

B. N. Davis and M. M. Brown, for the plaintiff.

J. A. Hutcheson, K.C., for the defendant.

C. C. Fulford, for the Sheriff.

MEREDITH, C.J.C.P.:—The difficulties of this case are not solved, but indeed are accentuated, by the ruling, and the expressions of opinion, in *Henderson's case* (*Re Henderson Roller Bearings Limited*, 22 O.L.R. 306, 24 O.L.R. 365; *Martin v. Fowler*, 46 S.C.R. 119).

In that case the facts were different in some very substantial respects from those of this case. It would have been a hard case if the assignee had succeeded. As I remember the facts, the active spirit in the assignment which was made, and in the cause which failed in all the Courts, was a creditor who throughout opposed the judgment creditors, and resorted to the assignment proceedings only after all other attempts to withhold the property from the creditors had failed.

This case is one of an assignment made in good faith for the purposes of putting all creditors on an equal footing.

In *Henderson's case* the assignment was not made until after failure on the interpleader issue, as well as in all other expedients to defeat creditors.

In this case the assignment was made soon after the interpleader order was made, and some time before the interpleader issue came on for trial; and quite without any inconsistent conduct on the part of those who seek to share in the proceeds of the insolvent estate.

If the rulings in *Henderson's case* had been in favour of the assignee, that case would have been conclusive of this case; no such question as that which has now to be solved could reasonably have arisen: the assignment would, as the one enactment plainly provides, have taken precedence over the executions, which are, of course, the foundation of the execution creditors' rights—take the execution away and what is left of their claims?

But the judgment in that case—the final judgment, I mean of course—affords no means of determining at what stage in the proceedings upon the executions, or in the interpleader, the right of the execution creditors take precedence over the right of the assignee. In *Henderson's case* there had been judgment in the interpleader issue in favour of the execution creditors;