

were valid, under the law as it then stood, as general assignments for the benefit of creditors; from which it would follow that assignees appointed under them are still liable and compellable to wind up and distribute the estates entrusted to their care. It would also seem to follow that if an assignment made before the act were bad in point of law as against creditors, it could not prevail against subsequent proceedings under the Insolvent Act; and in discussing this it would be material to consider whether the assignee under the act would have a *locus standi* to contest it, there being no special provision in the act which would make him stand in the stead of the creditors generally.

If making an assignment contrary to the provisions of the act is an act of insolvency, it would seem to follow as a natural consequence that such an assignment could not be permitted to stand in the way of proceedings taken under and in accordance with the act, unless indeed three months should elapse from the time of committing this act of insolvency before the commencement of such proceedings: (Sec. 3, subsec. 5.)

His Lordship Vice-Chancellor Mowat, in giving judgment in *Willson v. Cramp*, the case in which the point came up,* considered that any construction of the act which would prevent an assignee appointed under the act from receiving and administering the property of the insolvent, would render futile the enactment which makes such an assignment an act of insolvency, and would deprive the creditors of the advantages which the statute gives them for the winding up of the estate of an insolvent debtor. His Lordship also thought that it would be objectionable to let the assignment stand, as it put the debtor's property under a different course of distribution amongst his creditors from that which is contemplated and provided by the act—as, for example, in not giving any priority to the claims of clerks and other servants of the insolvent.

The scope of section 8, with reference to impeding and delaying the creditors of the insolvent, was also referred to as in itself sufficient to warrant the decision of the Vice-Chancellor, that such an assignment as that referred to was of no avail against subsequent

proceedings under the act, and on this point he cited cases in England under analogous statutes there.

The law on this point having now been judicially determined, it will be necessary for all assignees of voluntary assignments since the act, but not under it, to govern themselves accordingly; and should any such refuse to comply with a proper request to deliver up the books and property of the estate, they would become personally responsible for the costs of any suit that might be brought against them to compel them to do so.

SELECTIONS.

EVADING TOLLS.

A very ingenious mode of evading the payment of toll at Whalley-bridge-gate, has been turned to a profit by a certain innkeeper, who made use of the evasion for the purpose of attracting customers to his house. It appears that the keeper of the White Hart has a field adjoining the inn, and between the inn and the entrance to the field, stands the Whalley-bridge-gate. Mellor, the appellant, who is a farmer, was driving 120 sheep from Teddington to Stockport along this turnpike-road, and the sheep were driven into the field in question before passing through the gates. Mellor passed the night at the White Hart, and next day drove the sheep out of the field at the opposite end and over other land, and into the turnpike-road at a point nearer the Stockport, so that no toll was paid.

The Stockport magistrate convicted Mellor of the offence of evading toll, and the appeal came on before the Court of Queen's Bench sitting in banco, on the 31st ult. The landlord was compelled to admit that he used to stay at his house all night in order to save the toll. "I tell my customers," he said, "that if they stay all night they can get over this land without paying toll."

The judges were unanimous in their opinion that the magistrates were right in convicting the appellant of an intention to evade toll. And if the only point in the case were that which the judges assumed to be so—namely, the intention of the appellant to evade, it is surprising that he should have had the audacity to appeal. We are not satisfied, however, that the case is within the letter of the Turnpike Acts, and, if not, every subject has a right to evade an impost if he can.

The Lord Chief Justice was probably correct in his suspicion that the landlord was the real appellant, and that relying on the uncertainty of the law, he chose rather to incur the expense of litigation with the possibility of retaining his lucrative calling, than by sub-

* A report of this case is given on page 217 of the July number of the *Law Journal*, and will hereafter appear in the *Gazette*.