Proudfoot, J.] [February 3.

CANADIAN PACIFIC RY. CO. v. MANION.

Changing place of trial—Ejectment—Rule 254 O. J. A.—R. S. O. ch. 51, sec. 23.

In an action of ejectment the place of trial may be changed by order of a judge. If the power is not given by Rule 254 O. J. A., it is not taken away by that rule, and it is given by R. S. O. ch. 51, sec. 23.

Arnoldi, for the plaintiffs.

W. H. P. Clement, for the defendants.

Mr. Dalton, Q.C.] [February 11.

ONTARIO BANK v. REVELL.

Interpleader—Sale of goods—Payment into Court—Gross proceeds.

Where an interpleader order directs the sheriff to sell the goods seized and pay the proceeds into Court, it should provide that the whole proceeds be paid in without deducting the sheriff's expenses of sale or possession money.

Langton, for the sheriff.

McDougall and *Holman*, for claimants.

Leeming, for the execution creditors.

CORRESPONDENCE.

INSOLVENT ACT OF 1875, SEC. 125—IS IT ULTRA VIRES?—CONFLICTING DECISIONS IN DIFFERENT PROVINCES.

To the Editor of the LAW JOURNAL:

SIR,—Controversies as to the respective powers of the Dominion Parliament and Local Legislatures are in no cases more important than where they arise under the Insolvent Act of 1875. True, this statute has been repealed, but there doubtless yet remain many estates to be settled under it, calling for the application of different sections of the Act. A very important section is 125, purporting to compel a resort to the Insolvent Court or Judge by summary petition for the enforcement of "any debt, privilege, mortgage, hypothec, lien, or right of property in the hands, possession, or custody of an assignee," and to preclude "any suit, attachment, opposition, seizure, or other proceedings of any kind whatever"; a provision which, if not *ultra vires*, is a most salutary and necessary one, and will be sure to find a place in any Insolvent Act that may hereafter be enacted. I desire to call the attention of the profession to the conflict of decisions respecting this provision in the several Provinces. In *Crombie* v. *Jackson*, 34 U. C. Q. B. 575, it appears that Judge, now Chief Justice' Wilson, of Ontario, held section 125 valid, on the ground that the same provision existed in the Insolvent Act of the old Province of Canada, and that the British Parliament, in enacting the B. N. A. Act, must be presumed to have taken notice of the then existing laws of the Provinces. I cite from Clark on Insolvency, p. 294. But the Maritime Provinces had no Insolvent Act prior to Confederation; and if there is no better reason for upholding the section than the one ascribed to the eminent Chief Justice, it would seem to follow that portions of what ought to be and was certainly meant by its framers to be a uniform insolvent law for the whole Dominion would be in force in some Provinces and not in others. In New Brunswick, where, previous to Confederation, as I observed, no insolvent law existed, the corresponding section in the Canadian Act of 1869 was held valid in the case of *McQuirk* v. *McLeod*, 2 Pugs. 323, so that the holder of a bill of sale, by way of mortgage of chattels, could not maintain replevin against the assignee in insolvency who had taken the goods. But in the case of *Pineo* v. *Gavaza et al.*, in the Supreme Court of Nova Scotia, a diametrically opposite conclusion was arrived at. There the plaintiff, a creditor of the insolvent, shortly before his insolvency, agreed to lend him an additional $50 on his giving him a chattel mortgage to secure him the aggregate amount of his past and this newly created indebtedness. The goods mortgaged coming into the hands of the assignee, with other property in possession of the insolvent, the plaintiff brought replevin for them in the County Court. Like the case of *McQuirk* v. *McLeod*, it was not a question of the simple ownership of property as between the insolvent and a third party who, not being a creditor, could not file a claim; nor was it a case of a mortgage on real estate, which the Insolvent Court has not the machinery to effectually deal with. Assuming that, in the absence of actual fraud at common law or under the statutes of Elizabeth