

ii. sc. against the lands of the debtor in the hands of the proper sheriff which he would be entitled to enforce at an earlier date, in which case the sale should take place at such earlier date. See *Porte v. Irwin*, 8 P. R. 40.

PARTIES TO ACTION.

When a simple contract creditor brings an action to set aside an alleged fraudulent conveyance made by his debtor, it is necessary for him to make both the debtor and the grantee parties defendant: *Gibbons v. Davell*, 12 P. R. 478; but see *Faulds v. Faulds*, 17 P. R. 480; where an action is brought by an assignee for creditors, to set aside an alleged preferential transfer, the insolvent debtor is not a proper party: *Beattie v. Wenger*, 24 App. R. 72.

CONSTITUTIONALITY OF THE STATUTE.

After a considerable divergence of judicial opinion upon the subject, it has been finally determined that section 9 of R. S. O. (1887) Cap. 124, (now R. S. O. Cap. 147, sec. 11) is within the power of the Ontario Legislature to enact, so long as it does not conflict with any bankruptcy legislation of the Dominion of Canada; and presumably the balance of that Statute stands upon the same footing: *Attorney-General of Ontario v. Attorney-General of Canada*, 1894, A. C. 189.
