

that the estate shall be realized under the provisions of the Absconding Debtors' Act, would cover, in my opinion, the sale of the goods and chattels under s. 20 of that Act, which sale was made in this case by order of the Court. The distribution must then take place under the provisions of the Creditors' Relief Act, as directed by s. 22 of that Act. 51 Vict., c. 11, s. 1, removes any doubts as to when the statutory entry should be made where there are interpleader proceedings.

The only section of the Absconding Debtors' Act which creates any difficulty in upholding this opinion is s. 26, which says that "if the property and effects of the absconding debtor are insufficient to satisfy the executions and other claims certified, none shall be allowed to share unless their proceedings under this Act or the Creditors' Relief Act, or the provisions of the Division Courts Act respecting absconding debtors, were commenced within six months from the date of the first writ of attachment."

In *Macfie v. Pearson*, 8 Ont., 746, Mr. Justice ROSE held that this provision as to six months was in effect repealed by 46 Vict., c. 6 (s. 4, I presume). This section is now in the consolidation s. 20 of the Absconding Debtors' Act. The revisors have chosen, however, to leave the six months section above quoted as being still in force (section 26 in the Consolidated Act), notwithstanding the expression of opinion in *Macfie v. Pearson*. That this decision must have attracted the attention of the Legislature is, I think, manifest by the passing of 49 Vict., c. 16, s. 36 (now section 22 of the Creditors' Relief Act). By that section it is expressly directed what shall be done where proceedings are commenced under the Absconding Debtors' Act either before or after the placing of an execution in the sheriff's hands. It is necessary therefore to reconcile the conflicting provisions of section 22 of the Creditors' Relief Act and sections 20 and 26 of the Absconding Debtors' Act, and s. 1 of c. 11, 51 Vict., a somewhat difficult task—but it would appear to me that where the sale of goods attached is made under the powers contained in section 20 of the Absconding Debtors' Act, and interpleader proceedings, as here, have been instituted and terminated by a final order directing distribution, any creditor desiring to come in to share in the distribution must commence his proceedings within thirty days from the date of the sheriff's entry, which

should be made, as I have said above, forthwith after the order for distribution, and if such creditor cannot secure his judgment and execution or certificate within thirty days, he must apply to the Court for an order delaying the distribution under section 27 of the Absconding Debtors' Act.

This construction, in my opinion, enables the provisions of both acts to be justly carried out, and at the same time to allow an expeditious realization of the debtor's estate.

The effect of this view would exclude Van-Nostrand's claim to be ranked had the sheriff made his entry on the 18th or 19th of June. Does the sheriff's delay in making his entry until the 28th July affect the rights of the prior creditors? I do not think so. (See *Maxwell v. Scarfe*, 18 Ont., 529.) I therefore disallow Van-Nostrand's claim to be ranked upon the monies in the sheriff's hands.

The distribution scheme of the sheriff will therefore have to be remodelled, and John Abell included as an execution creditor to share in the \$1,734, less the deductions I have spoken of, \$400 and costs. If necessary the interpleader plaintiffs may file an affidavit to show the amount of these costs (if any).

As this point is a new one and properly stated by this motion for the opinion of the Court, I make no order as to costs.

COURT OF APPEAL.

From 1st Div. Ct., York.]
OSLER, J.A.]

[Oct. 18.]

WOOD v. JOSELIN.

Assignments and preferences—Garnishment of debt—Subsequent assignment of primary debtor—Priorities—R.S.O. (1887), c. 124, s. 9.

This is an appeal by the plaintiff from the judgment of the Junior Judge of the First Division Court, York, discharging the garnishee from the action (*post.* p. 563).

OSLER, J.A.—This action was brought by the plaintiff, as primary creditor, against Joselin, as primary debtor, and Sheppard, garnishee, under the appropriate clauses of the Division Courts Act, the primary creditor's claim not being a judgment. The summons was duly served upon the parties on the 30th and 31st January, 1890, and judgment was obtained against the primary debtor on the 14th February. The case was