

Shingle company did the same on the 13th January, 1915; on the 16th February, 1915, the sheriff sold Harrison's property, and realised a sum of money, of which he made an entry, according to form 1, under sec. 6 of the Act; on the 17th February, 1915, Harrison made an assignment for the benefit of creditors under the Assignments and Preferences Act; and on the 2nd March, 1915, the appellants placed their execution in the sheriff's hands, and there were others also within the month allowed by sec. 6.

The assignment did not cut out the creditors who lodged their executions after it was made.

Roach v. McLachlan (1892), 19 A.R. 496, and Breithaupt v. Marr (1893), 20 A.R. 689, considered and distinguished.

In the latter case, MacLennan, J.A., said: "If the money were realised and the entry made in the sheriff's books before the assignment, it is possible that the fund might be divisible among all creditors coming in within the limited time."

Here the money was in the hands of the sheriff; the assignee had no property in it nor any right except after the sheriff had paid all claims made upon it. What Mr. Justice MacLennan regarded as possible is the law; and the appellants should be included in the distribution.

Appeal allowed with costs here and below.

HIGH COURT DIVISION.

MIDDLETON, J., IN CHAMBERS.

NOVEMBER 29TH, 1915.

WARREN v. CAIRNS.

Mortgage—Default in Payment of Principal—Action for Principal and Interest—Payment by Mortgagor — Claim for Bonus—Amendment—Discretion—Refusal.

Appeal by the defendant from an order of the Master in Chambers allowing the plaintiff to amend the writ of summons in this (mortgage) action by adding a claim for \$30, being three months' interest by way of bonus.

F. H. Barlow, for the defendant.

E. E. Wallace, for the plaintiff.