

An appeal prosecuted by one Robert J. Henderson, in the name of N. L. Martin, the assignee for the benefit of creditors of the estate of the Henderson Roller Bearings Limited, from an order of a Divisional Court, 22 O.L.R. 306, ante 273, affirming an order of CLUTE, J., 22 O.L.R. 306, ante 162, on an appeal to him from an order of the Master in Chambers.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

A. H. F. Lefroy, K.C., for the appellant.

Grayson Smith, for the execution creditors Fowler and Eckardt.

J. G. O'Donoghue, for the Queen City Foundry Co.

R. J. Maclennan, for the Sheriff of Toronto.

MOSS, C.J.O.:—The sole question is, whether, in the circumstances of the case, the assignment made by the Henderson Roller Bearings Limited to Martin takes precedence over the claims of the creditors by whom and for whose benefit the interpleader contest was successfully prosecuted as against J. L. Atkinson's claim.

I am prepared to affirm the judgment of the Divisional Court, upon the special facts of this case.

The goods which were in the custody of the Sheriff at the date when the assignment by the Henderson Roller Bearings Limited to Martin, under the Assignments and Preferences Act, took effect, were not then the property of the company, but of Atkinson. They had, indeed, been declared not to be his property as against the execution creditors. That is to say, that, to the extent to which it might be necessary to deal with them for the satisfaction of the execution creditors' claims, the transfer of them to Atkinson was void. But, subject to these claims, they still remained his property. And, while they were in that position, they were dealt with by the Court in a manner which prevented him from disposing of them otherwise than subject to the claims of the execution creditors.

The order of the Master in Chambers, read in the light of the judgment pronounced by Latchford, J., upon the trial of the interpleader issue, was not an order or judgment against the company or its goods, but an order or judgment against Atkinson and his goods.

They did not pass by the assignment to Martin. It may be that, as indicated by the learned Chancellor in the Divisional Court, a potential right to vacate the original transfer to Atkin-