

HON. SIR WM. MULOCK, C.J.Ex. (v.v.):—The debtor made an assignment of his estate to Blain for the benefit of creditors, and certain of the debtor's relatives filed claims against the estate. The assignee, on instructions from the inspectors, decided not to contest these claims. Thereupon one Lawson, a creditor, on application to the Judge of the County Court, obtained an order authorising Lawson, upon getting security, to contest these claims for his own benefit, but in the assignee's name; and the third clause of the Judge's order is as follows: "And it is further ordered that any benefit derived from such proceedings shall to the extent of the claim of the said John A. Lawson, and full costs, belong exclusively to the said John A. Lawson."

From this order the assignee appeals on the ground that the learned Judge had no jurisdiction to grant such an order.

On behalf of Lawson it is contended that sec. 12 of the Act Respecting Assignments and Preferences by Insolvent Persons, being R. S. O. ch. 134, confers such jurisdiction. Sub-sec. 1 of sec. 12 is as follows: "Except as in this section is otherwise provided, the assignee shall have the exclusive right of suing for the rescission of agreements, deeds and instruments or other transactions made or entered into in fraud of creditors, or the violation of this Act."

Then follows sub-sec. 2 of sec. 12, which declares that, "Where a creditor desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the estate; and the assignee, under the authority of the creditors or inspectors, refuses or neglects to take such proceeding, after being required so to do, the creditor shall have the right to obtain an order of the Judge authorizing him to take the proceeding in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnify to the assignee as the Judge may prescribe, and thereupon any benefit derived from the proceeding shall to the extent of his claim, and full costs, belong exclusively to the creditor instituting the same for his benefit," etc.

We think these two sub-sections must be read together and that the proceeding contemplated by sub-sec. 2 is one which, if successful, recovers some asset for the estate.

The successful resistance of a creditor's claim adds nothing to the assets, although it reduces the amount of creditors' claims.