45, sec. 8, places goods seized by him under any process issued out of a division court in precisely the same position, as to the action of replevin, as 18 Vict. ch. 118 did goods seized by a sheriff under process from any court of record,) wantonly and causelessly, and, it may be, maliciously, takes from the actual and undisputed possession of the real owner *his* goods under colour and pretence of an execution or other process which he has for execution upon the goods of another, shall the person upon whom such wanton wrong may be committed, be held to be deprived of a right, recognized by the law of England, of availing himself of the only remedy which in the given case may be competent to secure him any adequate redress?

The second section of Con. Stat. U. C. c. 29, is expressed in briefer language than 18 Vict c. 118, but the substance and effect of both is the same, and both must receive the same construction. Now, certain of the goods of a judgment debtor are by law specially exempted from all liability under any execution issued upon the judgment: as, for example, the bed, bedding and bedsteads in ordinary use by the debtor; the necessary and ordinary wearing apparel of himself and his family; the tools of his trade, to a certain amount. If, then, a sheriff's bailiff, or the bailiff of a division court, although the right of exemption should be claimed, should vexatiously and wantonly seize these exempted articles; or if a sheriff's bailiff, or the bailiff of a division court, without any pretence of right, should vexatiously and wantonly enter the house of A., and strip it of all his household furniture in his actual use, merely because the bailiff has in his hands an execution or other process against the goods of B.; or if a sheriff's bailiff, under like circumstances, should seize a raft of timber belonging to A. and in his possession, on its way for delivery to C., under a contract which A. is bound under heavy penalties to fulfil, and should so cause a breach of the contract; or if, under like circumstances, and it may be by fraudulent collusion with B, the execution debtor, or with his creditor, the sheriff should seize a steamship belonging to A and in his possession, freighted with goods and passengers, at the moment of its departure from port on its voyage, and so prevent the voyage altogether—can any of these goods so wrongfully seized be, with any propriety of language, said to be *in the lawful keeping of the sheriff or bailiff, under and by virtue of a process which neither directs nor warrants any such service.* Or shall it be said that a judge, when invoked to permit the party so wronged to seek redress in the only form of action which can give him any relief, shall have no jurisdiction to do so? Similar instances without number, of wanton injury, might be enumerated, where the goods of an utter stranger to the process in the bailiff's hands, and to the person against whom it has issued, may be wrongfully and vexatiously seized by the officer; wherein, if a judge, upon hearing the parties, and being satisfied that the seizure is utterly inexcusable, cannot sanction the issuing of the writ of replevin, the hands of justice must be admitted to be most cruelly tied. I am not aware of any case which has held that justice is so crippled. In this case I am not called upon, however, to rest my decision upon the ground that in answer to the application for the writs there is no denial of what is plainly asserted on oath, namely, that the goods seized were the property of and in the possession of the claimants when seized, and that they were wrongfully seized without any process authorising such seizure; for I am of opinion that the goods now being in the possession of the official assignee are not in the custody of the sheriff or other officer under the process, within the meaning of section 2 of 22 Vic. c 29, even though that section could protect the goods in the hands of the sheriff from being reached by a writ of replevin.

The execution of all process coming out of courts of record to be executed, belongs to the sheriff of the county to whom it is addressed; except when the sheriff is himself a party, when it belongs to the coroner to execute it.

The term, then, "sheriff or other officer," in 18 Vict cap. 118, and in 22 Vict cap 29, sec. 2, as indeed is plainly expressed in 18 Vict., means a sheriff or other like officer, as his deputy, bailiff, or a coroner, "*to whom the execution of such process of right belongs;*" and what is declared not to have been authorised is the replevying the goods which *such* sheriff or other officer shall have seized under or by virtue of the process *out of his hands* Now, when the sheriff has transferred the goods seized under an attachment in insolvency, in discharge of his duty under the process placed in his hands, to the official assignee in insolvency, they came into his hands and could only be detained therein *as and if they are the property of the insolvent.* In no other event can the official assignee retain the goods. He becomes liable to the true owner, from whom they were wrongfully taken, not by reason of the original wrongful taking, but by reason of his own wrongful detention of goods not belonging to the insolvent after a demand made for them upon him by the true owner, from whom they had been taken Such wrongful detention cannot be justified by the assertion that the sheriff, who had wrongfully seized the goods, had given them to the assignee If the goods were now in the hands of the sheriff he, to set himself right with the true owner, and to protect himself from an action, might unhesitatingly restore the goods to the owner When the official assignee, to whom he has delivered them (upon demand being made upon him by the true owner), refuses to restore them, *he* becomes a wrong-doer himself, wholly independently of the sheriff and of the wrong committed by him, and must be responsible for his own acts.

The affidavits and argument upon the appeals leave no doubt on my mind that these are cases in which I have a discretion enabling me to grant writs of replevin, and that I properly exercise that discretion by granting them, which I therefore do without further delay, to enable the official assignee, if so advised, to have my judgment reviewed by the court during the present Term; and as the Act of 1860 enables me to direct that a bond may be taken in less than treble the amount of the property I think it proper to limit the amount to a sum not exceeding four thousand dollars in each case. The orders of Mr. Dalton will therefore be set aside, and the orders will go for the writs of replevin.