

an assignment for the benefit of creditors, and delivered the same to the sheriff.

On June 16th a final order in the interpleader proceedings was made, directing the sheriff to distribute the monies in his hands amongst the parties entitled. On July 11th, John Abell, who contested the sheriff's proposed scheme of distribution, obtained a judgment, and on July 14th placed his execution in the sheriff's hands. On July 28th the sheriff made the usual entry in his books under the Creditors' Relief Act.

On August 6th one John VanNostrand obtained a judgment, and placed his execution in the sheriff's hands. On August 28th the sheriff served his scheme of distribution, by which he divided the amount realized from the proceeds of the goods sold under the interpleader order, amongst the plaintiffs only; in those proceedings ignoring the claims of John Abell and John VanNostrand, two creditors who had executions in hands at the date of his preparing his scheme of distribution, and which writs came into his hands within a month after he had made the entry in his book under Sec. 4 of the Creditors' Relief Act. These latter two creditors claimed to be entitled to rank rateably on these monies or on a part of them.

R. J. MacLennan for plaintiff.

R. Boulton for attaching creditor.

Mercer for Rennie.

Duncan for John Nicol.

F. Eddis for VanNostrand.

No one appeared for defendant.

MCDUGALL, Co. J.—It appears that Muckle, the claimant, admitted in his affidavit making his claim, that he only held the bill of sale (upon the goods the subject of interpleader) as security for the payment of \$380.09, and stated in this affidavit that upon the payment to him of that amount and his costs of taking possession of these goods, he would abandon all claims to the goods. His claim as to this or any amount was held to be invalid upon the trial of the interpleader issue. Abell and VanNostrand, in their claim to reform the sheriff's scheme of distribution, contend to be ranked only upon the balance of the monies realized by the interpleader proceedings, after deducting this \$380.09 and any unpaid costs incurred by the plaintiffs in contesting Muckle's claim. They say this was the whole sum obtained as the fruits of the interpleader proceedings. They say Muckle

claimed no more, and had he succeeded in his issue that is the only sum with his costs that he could have lawfully demanded from the sheriff out of the proceeds of the sale of the goods covered by his bill of sale. On the other hand, it is strongly urged that Muckle was supporting his bill of sale, and that had he succeeded in maintaining its validity, he was entitled to the whole proceeds of the sale of the goods covered by it. The interpleader order itself expressly directed that "the question to be tried should be whether at the time of the seizure by the sheriff the goods seized were the property of the claimant as against the attaching and execution creditors," and from this it is contended that the whole value of the goods seized were secured to the estate by the plaintiffs in the interpleader proceedings contesting successfully Muckle's claim, and that only those creditors who joined in those proceedings should share in the division of the monies arising therefrom.

Strictly speaking, the title to the whole of the goods covered by the bill of sale were in question, and had the value been only about \$400 there would be no dispute now; but having realized \$1,734 at the sheriff's sale the question now arises, was this amount saved to the estate by the interpleader proceedings? Muckle only claimed to have a claim for \$380 and some charges for possession, and had the creditors consented to his being paid this amount, Muckle expressly waived all claim to any balance.

Looking at the intention of the Act to effect an equitable division of the debtor's assets amongst all his creditors, and yet by s-s. 3 of s. 4 to protect fully any creditors who run risk in undertaking legal proceedings to contest unjust claims, I think I am justified in holding that any surplus after deducting the true amount of Muckles claim, \$380, his costs of possession, say \$20 more (though nothing appears on the papers before me to fix the sum), and any costs (including solicitor and client costs) incurred by the plaintiffs in contesting Muckle's claim beyond costs realized from Muckle himself, should be distributed between the other creditors who placed executions or filed claims under the Creditors' Relief Act before the 19th of July. I fix this date because I think under 51 Vict., c. 11, s. 1 (Ont.), the sheriff should have made his entry forthwith after the final order of distribution, made by the Master, on the 18th of June. S. 22 of the Creditors' Relief Act, when it says