When special provisions are enacted for dealing with particular cases, those provisions are to govern, even though there may be some general provisions of another enactment that might be deemed wide enough to cover some of them.

Besides this, I cannot think the Trustee Act wide enough to cover this case; nor can I see how Rule 600 can be.

Section 26 of the Assignments and Preferences Act provides that nothing in its two sub-sections shall interfere with the protection afforded to assignees by sec. 56 of the Trustee Act: and the protection afforded by that section is not to trustees merely, as it should be if the word "trustee" included assignee for the benefit of creditors, but is to "trustee, assignee, or personal representative." One section and one section only of the Trustee Act is made applicable to assignees such as the applicant. I hold that the provisions invoked of the Trustee Act are not applicable to this case.

In regard to Rule 600, it carries forward only that which was for very many years, to some extent, the practice of the Court of Chancery, applicable to the cases to which it is commonly applied; and is, as the words "without an administration of the estate or trust" shew, applicable only to cases that would be determinable properly in such an administration. Insolvent or bankrupt estates are not so administered.

However, at the urgent request of the parties who did appear upon this application, for some expression of opinion respecting the difficulties in which they think they are involved, it may not be amiss to add, but, of course, only as *amicus consultoris*:—

That it could hardly be possible to express any opinion upon facts so vaguely set out as they are upon this application. Both sides should be heard, and that can be only in proceedings which will compel the attendance of each; or else one side only heard after notice to the other in proceedings in a Court where there is the right to adjudicate in the absence of him who does not attend. An action by the surety, or the assignee ,or both, may be found to be the only way of recovering part of the dividend paid, if it be recoverable.

The law upon the subject of a contest between creditor and surety as to right to rank upon the debtor's estate is simple and not unreasonable. If the surety be surety for the whole debt he cannot rank in competition with the creditors until the whole debt is paid: why should he? His obligation is to pay the whole debt; how can he be be permitted not only to fail to do that, but to prevent, for his own gain, the creditor obtaining full pay-