the Act? I contend it would, and form my opinion from the statute itself. The effect of an assignment, or the appointment of an official assignee, is declared to be, "to convey and vest in the assignee the books of account of the insolvent, all vouchers, accounts, letters, and other papers and documents relating to his business, &c.. which he has or may become entitled to at *any time before his discharge under the Act, excepting*," &c; sub-sec. 7 of sec. 2, and sub-sec. 22 of sec. 3; and all creditors can come in and share *pro rata* in the insolvent's estate. The assignee represents the creditors, and has an absolute right of property in, as well as a right of possession of all the insolvents estate, real and personal, wheresoever situated, excepting only such as could not be seized under execution. This is much more than the writ of execution could do for the creditor in the case of a *fi. fa.*, that would only give the sheriff a right of possession of, with a lien upon certain kinds of personal or real estate situate in his bailiwick, to be sold within a limited period, and always at a sacrifice. If the creditor is not entitled to his discharge he will always remain in this way, and whenever he gets a cents worth beyond what the law exempts from seizure under execution it instantly ceases to be his and vests in his assignee—in trust for the body of creditors. The assignee has got to apply for his discharge after notice, and it would not be granted until after all the assets were converted and distributed, and until the insolvent gets his discharge. The practical effect then of the assignment and appointment is, that of *a judgment recovered*, not of an action pending, as in *Baldwin* v. *Peterman*, 16 U. C. C. P. 310. The assignee in his own name as such sues for the recovery of debts due to the insolvent, and may "intervene and represent the insolvent in all suits or proceedings by or against him which are PENDING at the time of his appointment. In suits or proceedings commenced against the insolvent after the insolvency proceedings, the assignee cannot intervene, the insolvent has no means to employ a professional man to defend him; and no matter how unjust the claim may be his hands are tied, he must submit, and when he gets his discharge from the insolvent court (the expenses of which are defrayed by the estate) he finds a judgment against him—a judgment debt contracted *after* the date of his assignment staring him in the face—a judgment founded on a most unjust and illegal claim, but "*interest reipublicæ ut sit finis litium*," and the illegal claim is merged in the legal judgment obtained *after* his assignment in bankruptcy.

By sub-sec. 9 of sec. 5, costs incurred in proceedings against an insolvent before due notice of an assignment or writ can rank upon the estate, such costs forming a debt contracted *before* insolvency proceedings. Costs incurred after due notice do not so rank. With what constitutes due notice I have nothing to do here, the statute elsewhere points that out. Now the Statute of Gloucester, 6 Edw. 1, c. 1, says, that the plaintiff in all actions in which he recovers damages shall also recover against the defendant his costs of suit. If then a creditor can sue and obtain judgment AFTER these proceedings in insolvency the Stat. Gloucester gives him full costs of suit.

Again, the insolvent is only discharged from such debts as are proveable against his estate and existing against him at the time of his assignment, not from debts contracted afterwards. If, then, a creditor be allowed to put his claim into a judgment with costs, the original cause, *transit in rem judicatam*, is merged and gone forever. If one creditor can do this, all can, and the insolvent would find that his debts, instead of being erased by the insolvency proceedings, have, like the prophet's gourd, during the long night of his commercial death, most wonderfully increased in size, and that he owes twice as much as he did before.

The words used in sub-sec. 9, sec. 4, *supra*, giving the assignee power to intervene in all proceedings by or against the insolvent which are *pending* at the time of his appointment, of themselves shew by direct inference that he cannot be sued after assignment or appointment.

The argument used against me is, that the insolvent may never get his discharge. True, an execution debtor may never get his pay. If he never gets his discharge his assignee will not, and whenever he gets anything his assignee owns it and takes for the creditors. Could an execution do more than or as much as this?

There are no authorities against this view. *Baldwin* v. *Peterman* is not, as I have shewn. *Spencer et al.* v. *Hewitt*, Law Rep. 1 Ex. 123, is under the English Bankruptcy Act. I have not the English Act, but from the reported cases on it it seems entirely different from