

Divisional Court.

BOYD, C., ROSE, J. }
ROBERTSON, J. }

Jan. 17.

IN RE THOMPSON.

Attachment of debts—Assignment for benefit of creditors—Executions—Priorities—Sheriff—Creditors' Relief Act, sec. 37.

An assignment by an insolvent for the general benefit of his creditors does not oust a prior attachment by a creditor of the insolvent of a debt due to him.

Wood v. Joselin, 18 A.R. 59, followed.

Section 37 of the Creditors' Relief Act must be construed to refer only to a case where the facts would entitle a sheriff, if there had been no attaching order issued by a creditor, to obtain one at his own instance, under s-s. (1), sec. 37; and, to entitle him to such order, there must be in his hands several executions and claims, and not sufficient lands or goods to pay all and his own fees, and a debt owing to the execution debtor by a person resident in the bailiwick.

And where a debtor, who was entitled to certain insurance moneys, assigned them to his wife, who subsequently assigned them to her husband's assignee for the benefit of creditors, and such moneys were also attached by a creditor of the husband between the dates of the assignment to his wife and his assignment for creditors; and some months after these transactions, when the moneys were in court awaiting the result of litigation between the assignee and the attaching creditor, two executions against the debtor came into the hands of the sheriff of the county in which the insurance company, in whose hands the moneys were when attached, had its head office.

Held, that the moneys had ceased to be the property of the debtor, and, even if there had been no attaching order, the sheriff could not have obtained the moneys for the purpose of satisfying the executions.

Semble, also, that the provisions of s-s. (3) of sec. 37 should be read as confined to creditors having executions and claims in the sheriff's hands at the time of the attaching of the debt.

W. R. Riddell and F. J. Travers, for the attaching creditor.

Rowell, for the Sheriff of Elgin.

W. H. Blake, for the assignee.

BOYD, C., ROBERTSON, J., }
MACMAHON, J. }

Feb. 18.

GUROFSKI v. HARRIS.

Fraudulent conveyance—13 Eliz., c. 5—Intent to defeat action for tort—Creditor—Preference.

Where a conveyance of land was made by a father to a daughter, with intent on the part of both to defeat an action for slander then pending against the father, but made and accepted in satisfaction of a bona fide pre-existing debt to the extent of the full value of the land.

Held, that the conveyance being attacked under 13 Eliz., c. 5, by one who became a creditor by reason of the judgment obtained in the action of slander