should be paid their dividend, any surplus that there might be should go to their assignor" (17 U. C. Q. B. 170); and Mr. Justice Burns, in the same case, described the assignment as "an attempt to coerce the creditors to come in under a disadvantageous condition, at the peril of getting nothing" (*Ib.* 171). In one case where the debtor having obtained from his creditors an extension of time, covenanted to pay all his debts in full and not to part with his effects except for the benefit of his creditors generally, but subsequently made an assignment to one of his creditors for the benefit of *all*, the deed containing a release from all further indebtedness by the creditors executing the assignment. The Court of Chancery declared such an assignment to be in contravention of the agreement; that the creditors were entitled to participate ratably in the proceeds of the trust without releasing the balance of their claims (*Taylor* v. *Mabley*, 6 U. C. Chan. R., 570). The result of the cases seems to be that a person who is making an assignment has no right to dictate terms whereby he is to derive a benefit or advantage to himself. If there be any secret trust, benefit or advantage to be derived from the assignment by the debtor, the transaction will be fraudulent and void as against those creditors who do not agree to it.

What shall be done, when executed.]—The assignment must be not only for the benefit of creditors in good faith, but notice of it must be given, directly or indirectly, actually or constructively, to the public, so that creditors may be informed of its existence, and govern themselves accordingly. It is enacted by the 20 Vic. cap. 3, sec. 2, that every sale of goods and chattels which shall not be accompanied by an immediate delivery, and followed by an actual and continued change of possession of the goods and chattels sold, shall be in writing, and such writing sworn to and registered in the office of the clerk of the county court of the county or union of counties where the bargainor (if a resident of Upper Canada) shall reside; otherwise such sale shall be void as against the creditors of the party conveying, &c. (secs 2 & 5). The instrument must be accompanied by an affidavit of execution, and an affidavit of the bargainee, or his agent duly authorized in writing to take the conveyance, &c., that the sale is *bona fide* and for good consideration, as set forth in the conveyance, and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein as against the creditors of the bargainor (sec. 2 of 20 Vic. cap. 3). The statute (which does not apply to lands) recognizes a delivery and continued possession thereafter to convey title, and the object is to guard the rights of creditors and subsequent purchasers and mortgagees in good faith against cases where a delivery and continued change of possession does not follow the sale; and it is sufficient for us on this point to state that any assignment to creditors has been held to be a "sale" within the meaning of and to come under the operation of the act. (*Taylor* v. *Whellemere et al.*, 10 U. C. Q. B. 440; *Heward* v. *Mitchell, et al.*, *Ib.* 535, S. C. 11 U C. Q. B. 625.) *It seems that the affidavit* may be made by one of several, as well as by all assignees, in a deed. (*Heward* v. *Mitchell et al.*, 11 U.C. Q.B. 625.)

The act as to the registry of bills of sale, &c., applies only to cases where the goods and chattels are in the possession of the assignor at the time of the assignment, and not to goods and chattels subsequently acquired. As a general principle, it is clear that an assignment of personal property can only operate upon such property as was in existence, and as the assignor had an interest in, at the time of executing the assignment. (*Short* v. *Ruttan*, 12 U. C. Q. B. 79.) Thus: where a chattel mortgage was made on the 18th February, 1853, of seven hundred pieces of timber, "together with whatever quantity of squared timber the party of the first part may manufacture during the remainder of the season," and the timber made after February, 1853, was allowed to remain in the possession of the mortgagor, it was held that as against a creditor of the mortgagor the mortgagee was not entitled to such subsequently made timber. (*Cummings et al.* v. *Morgan*, 12 U. C. Q. B. 565; see also *Campbell* v. *Reed*, 14 U. C. B. 305.) If the goods intended to be assigned are not in the possession of the assignor—for example, in a custom house—*it would appear there cannot be any actual and* continued change of possession to satisfy the statute. (*Harris et al.* v. *The Commercial Bank*, 16 U.C. Q.B. 43.)

It is not a question of law, but a matter of fact for the decision of the jury, whether, under all the circumstances of a particular case, there has been an immediate delivery, and actual and continued change of possession, under an assignment, sufficient to satisfy the statute, where the assignment is not registered, as the statute prescribes. (*Forbes et al. v. Smith*, 13 U. C. Q. B. 243; *Waldie v. Grange*, 8 U. C. C. P. 431.)

Where a debtor, just before several executions issued against his property, assigned it to trustees for the benefit of his creditors, with the most minute accuracy as to every article of property, and his sign was taken down from his shop, but he remained with his clerks in possession of the goods, selling them as if his own property, but accounting *to the trustees, the property having been taken in execution* by the sheriff as belonging to the debtor, it was held, in an action of trespass by the trustees against the sheriff, that, the jury having negatived the possession of the trustees, a verdict for the sheriff was correct. (*Armstrong et al. v. Moodie*, 6 U. C. O S. 538; see also *Servos* v. *Tobin et al.*, 2 U. C. Q. B. 530; and *Wilson* v. *Kerr et al.*, 17 U. C.