

after making further provision for the payment of certain costs, it was further ordered that the Sheriff do proceed to sell the said goods and chattels in question or sufficient thereof to cover the executions of the creditors, including all the Sheriff's fees, poundage, &c., and costs of the Sheriff and the execution creditors of the interpleader proceedings, and of the issue, out of the proceeds of such sale, the Sheriff to pay all such executions and costs and expenses, the said execution creditors having a lien therefor.

On the 8th October, 1910, the Henderson Roller Bearings Limited made a general assignment for the benefit of creditors to N. L. Martin, and on the 11th October, Martin, as assignee, made a demand upon the Sheriff, claiming the property of which the Sheriff was in possession, whereupon the Sheriff, on the 15th October, 1910, made an application in Chambers for an interpleader order as between Martin, as assignee, and the execution creditors. Upon that application the Master in Chambers, on the same day, ordered that the motion be adjourned until after the Sheriff should have sold the said goods and chattels in question, and further ordered that the motion might be resumed after the sale. From that order this appeal is taken.

The question, therefore, is as to whether the assignment to Martin takes precedence of the executions and orders in this case, so as to give the assignee the right to the possession of the goods and chattels so seized, and in possession of the Sheriff. The assignee claims under the Assignments and Preferences Act, 10 Edw. VII. ch. 64, sec. 14. This section declares that assignments for the general benefit of creditors under this Act shall take precedence of . . . judgments and executions not completely executed by payment . . . subject to a lien, if any, of the execution creditor for his costs, where there is but one execution in the Sheriff's hands, or to the lien, if any, for his costs of the creditor who has the first execution in the Sheriff's hands.

The creditors, on the other hand, contend that under the Creditors' Relief Act, 9 Edw. VII. ch. 48, sec. 6, sub-sec. 4, they are entitled to have their executions paid in full. That section provides that "where proceedings are taken by a Sheriff for relief under any provisions relating to interpleader, those creditors only who are parties thereto and who agree to contribute pro rata in proportion to the amount of their executions or certificates to the expenses of contesting any adverse claim shall be entitled to share in any benefit which may be derived from the contestation of such claim so far as may be necessary to satisfy their executions or certificates."

[Reference to *Clarkson v. Severs*, 17 O. R. 592.]