not been properly executed, and if they cannot object I fail to see how the plaintiff can.

I do not understand that the plaintiff having proved his claim before the assignee prevents him going on with this action at law. *Thorne* v. *Torrance*, in Appeal, 18 U. C. C. P. 29, refers to many of the authorities on the subject.

After the plaintiff proved his debt before the assignee and ranked on his estate for it, it would seem rather strange if he were allowed to contend that Thomas was not a properly authorised person to whom an assignment could be made under the statute, and still more strange that he should be allowed to do this after having accepted and obtained the order of this court to set aside the discharge allowed in the Insolvent Court, with costs to him, the plaintiff, to be paid out of the insolvents' estate: *Newton* v. *The Ontario Bank*, in Appeal, 15 Grant 283.

As to the question of payment of money into court, the precedents from compositions under the English Bankruptcy Act do not apply. The provision in the deeds under that statute usually is, that when the composition is paid it shall operate as a discharge, and until default made the agreement in the deed may be set up as a bar to any action against the insolvent. Under section 9 of our Act of 1864, the deed shall bind all the creditors as if they were parties to it, and the discharge therein agreed to shall have the same effect as an ordinary discharge as therein provided.

By sub-section 3 the consent discharges the insolvent from all liabilities whatever, except as are thereinafter excepted. The indenture set up by the defendants, if properly executed and binding, would, in and by its terms, discharge and release the defendants from all debts, claims and demands whatsoever, against them, and provable against their estate.

I therefore see no difficulty, if the release is binding, in amending the pleadings so as to make it a complete defence.

As, however, I have arrived at the conclusion that the plaintiff is not bound by the deed of composition and release, the verdict will be entered for him for the amount of the note and interest, less the amount paid into court.

In conclusion, I think I may with propriety repeat the language of Baron Piggott in concluding his judgment in *Martin* v. *Gribble*, 3 H. & C. at p. 638: "It is unpleasant to give judgment upon a mere technical point of law, without regard to the merits of the case, and it is desirable that the Legislature should pass a short Act embodying a form of deed of composition to be used on all occasions, so as to put an end to these much vexed questions."

The verdict should be entered for the plaintiff for $127.14, being the note and interest to 1st April, 1869, $155.69, less the amount paid into court, $28 55.

WILSON, J.—The plea was not proved which alleges that if there were no separate creditors of the insolvents.

I was not disposed to interfere on appeal with the decision of the learned Judge in Insolvency, who had, when the matter was before him, decided that Williamson had no separate creditors: see 28 U. C. Q. B. 266. But as the question comes directly before this court, exercising a primary and original judgment, for myself I think there was such separate liability.

As to the subsequent execution of the deed by the insolvents, I think it was rightly done.

I see no reason why, when a grantor has not executed a deed by inadvertence, it may not, at any time after it has been delivered to the grantee, be perfected by him. It would take effect from that time. No do I see any reason why a grantee who has not executed the deed at the time of its delivery might not execute it at any time afterwards.

In both these cases the parties who subsequently executed were and are parties named in and identified by the deed, which distinguishes them from the case where the annexation of the schedule was held to be an alteration of the deed; for in that case the parties to the deed were not named or identified at the time the deed was executed by the grantees, and they only became known and ascertained when, at a subsequent time, the schedule was added.

In this case the debtors were named in and parties to the deed, by being described as parties to it of the first part in the premises. When they executed the deed they were only perfecting it, not altering it in any way.

If the deed had been registered in its imperfect form, the subsequent perfecting of it would not have perfected the registration. It would require to be registered anew. So, if this deed had required any confirmation by the creditors, or assignee, or judge, before it was to have effect, the deed would not have been operative if not executed properly at the time of such confirmation of it, and the subsequent execution of it would not make valid the previous confirmation. There would have to be a fresh confirmation after the completion of the deed.

But this deed required nothing of the kind. It was intended to take effect just as it is expressed in the body of it, and to be executed by those therein named. That which was so intended to have been done, and which was not done on one day, may be done on another, and therefore I think the deed was rightly executed, and became a perfect and valid instrument by the execution of it by the debtors.

There is, however, something else to be considered. The Act of 1864, sec. 9, sub sec. 2, required the deed to be deposited with the assignee, who was to give notice thereof by advertisement, and the creditors were allowed six juridicial days after the last publication of the notice to object to it. If they did not object the deed might be acted on. If any creditor did object to it, the assignee was not to act on the deed until it was confirmed by the judge.

Now this deed would require, since its execution by the debtors, to be dealt with in this manner to make it effectual, and as that has not been done the debtors can make no use of what was done upon or in respect of the deed in its imperfect form, as applicable to the deed in its completed state.

I agree therefore in the conclusion to which the learned Chief Justice has come.

MOWAT, J., concurred with the Chief Justice.

Rule absolute.