

action was effected between the owner and the mortgagee. If this is the meaning and result of the Act, I do not feel disposed to extend its methods to the distribution of assets in this court."

How far this is a valid reason for refusing to give effect to the Act we do not propose to discuss. There can be no doubt, however, that to apply its provisions to the case in hand would have led to a curious and perhaps a not very satisfactory result as regards some of the creditors affected, from the point of view of abstract justice.

At an early period after its passing, the question as to the rights of execution creditors, some of whose writs were prior, and some subsequent to specific mortgages or charges upon the property subject to execution was under consideration. The result of the decisions in *Roach v. McLachlan* (1892), 19 A.R. 496; and *Breithaupt v. Marr* (1893), 20 A.R. 689 was to affirm the priority of execution creditors, whose writs were prior to such charges over the writs of creditors which were subsequent thereto. The Legislature six years afterwards in the year 1899, by 62 Vict. (2), c. 11, s. 13 (which is now in substance s. 33 (11) of the present Creditors Relief Act) made an express provision on the subject by way of amendment to the Act. It can hardly be said therefore that the cases above referred to are authorities for the construction of the Act in its present form. The subsection 11 in the present Act is as follows: "11. Where a debtor has executed a mortgage or other charge, otherwise valid, upon his property or any part thereof after the receipt of an execution by the sheriff, and before distribution, such mortgage or charge shall not prevent the sheriff from selling the property under any execution or certificate placed in his hands before distribution, as if such mortgage or charge had not been given, nor prevent creditors whose executions or certificates are subsequent thereto from sharing in the distribution; but in distributing the money realized from the sale of such property the sheriff shall deduct and pay to the person entitled thereto the amount which would otherwise be payable out of the proceeds of such property to the subsequent creditors."