

McTavish; what he wanted that sum for, or what use he made of it, does not very distinctly appear; the evidence furnishes no ground for supposing that he wanted it for any emergency of business, or that he applied it to any purpose of which his creditors, directly or indirectly, got the advantage.

It does not seem to me to be material for the plaintiffs to make out that the intent to prefer was the assignor's sole intent, or even principal motive, in making the assignment. I think it sufficient that the preference was one intent, and am of opinion that any other motive which operated with the assignor, was not of such a character as to render this intent harmless in reference to the policy of the Act.

There was some forcible argument at the bar as to whether notice by McTavish of his debtor's insolvency was material to the plaintiff's case; but it is unnecessary for me to express any opinion on that point, as I think he had such notice.

The Sheriff is authorized by the 261st section of the Common Law Procedure Act to "seize specialties or other securities for money." A fire policy under seal, after money has become payable thereon, is certainly within these words; and I have failed to satisfy myself that the fact of the amount to be paid not having been ascertained and liquidated before the assignment, or of the policy being in a Mutual Insurance Company—circumstances relied on by the defendant—constitutes any solid ground for holding that the policy was not within the meaning, as well as the words of the statute. I must therefore decree for the plaintiffs.

Part of the consideration for the assignment was money advanced at the time, but, the assignment being void as a fraudulent preference, McTavish could not, I think, in equity, any more than at law—*Lempriere v. Pasley*, 2 T. R. 485; *Ayling v. Williams*, 5 C. & P. 401; *Featherstone v. Hutchinson*, Cro. Eliz. 199; *Scott v. Agilmore*, 3 Taunt 226; *Thomas v. Williams*, 10 B. & C. 671; *Ferguson v. Norman*, 6 Sc. 810; *Higgins v. Pett*, 4 Exh. 324—claim to hold it as a security for the advance, or any part of it.

After the assignment, Cardell agreed with the Company to accept \$300 in full, in respect of his loss, and the plaintiffs acquiesce in this agreement. I understood all parties to admit that more than that sum was due the plaintiffs on their execution. If so, the decree will be for payment to the plaintiffs of that sum by the Company, less the Company's costs of this suit. The plaintiffs will add the Company's costs to their own, and are entitled to both against the other defendants. If it is not admitted that so much is coming to the plaintiffs on their execution, there must be a reference to ascertain the amount.

## CORRESPONDENCE.

### *The Question of Division Courts Costs.*

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—Business has fallen off in the Division Courts so very perceptibly, that the clerks in the country and small town courts, who have for several years, by the exercise of very great prudence and economy, maintained their families on incomes not exceeding those of carpenters or masons, are now reduced to very near starvation point. Is it any crime then I ask that they should charge all they legally can for their services? Especially since all they can legally claim is such an amount in comparison with the work which has to be done for it as no other men have been asked to accept.

I say fearlessly that no body of men in Canada have been worse paid, more unjustly used, or more insulted by public men than the respectable body of Division Court Clerks of the Province of Ontario, and their Bailiffs. The number of those of them who go beyond the correct rendering of the tariff in charging costs, are I know, and will continue to think until proof is given, fitly represented by 0.

I do not know whether I am "the out County Clerk" who is accused of having charged \$4 on an application for new trial, by your correspondent, or no; but lately on an application for a new trial, where one of the parties lived out of the county and sundry papers and notices had to be served requiring transmission to the clerk of the division in which the party lived, the fees amounted to \$3 36, of which 30c. went to the F. F. for judge's orders.

It certainly is out of my memory and I think out of that of the very "oldest inhabitant" when justice or law could be got without money or without price, or mercy either for that matter, except in Heaven. The *Queen's* judges are now I presume paid by the public, as the "*King's* judges" were formerly. But I have not yet heard of lawyers being paid by the public, nor, except in part, officers of the courts either. And the County Court judges are paid from the Fee Fund, so cannot be said to be paid by the public in the sense that the superior court judges are said to be. "In Toronto and many counties, bailiffs claim, and are allowed fees, varying from 30 to 75c. on return of executions *nulla bona*," and very properly so and on good authority—that of