

The motion was heard in the Weekly Court at Toronto.
G. M. Willoughby, for the applicant.
W. H. Barnum, for E. J. Fearnley, a surety.

MEREDITH, C.J.C.P.:—The applicant is an assignee for the benefit of creditors, under an assignment which comes within the provisions of the Assignments and Preferences Act: and the purpose of the application is to have conflicting claims of right to rank upon the estate determined, upon a summary application, in this Court.

It is said that the application is based upon the provisions of the Trustee Act—sec. 66, I suppose; and it is shewn that an application of the same character was recently made and given effect, under the provisions of Rule 600: but not without an expression of doubt as to the applicability of the Rule to such a case—a doubt which, I have no doubt, was well-founded.*

The novelty of such an application in itself raises a strong suspicion that it is misconceived: as I had and have no doubt it is.

In the first place the contest is over the right to a dividend which has already been paid to one of the contestants. No opinion, advice, or direction that could be given upon this application, if there were power to give any, could recall the money. . . . The creditors who have the money have not in any way submitted their rights for consideration upon this application; they have altogether ignored it, as they had a right to do.

But it is said that there may be another dividend; and so it may be that the questions which perplex the assignee may become practical; and the opinion, advice, or discretion sought really needed; and, that being so, it is necessary to consider the question whether the invocation of the Trustee Act or of Rule 600, in such a case as this, is in any way warranted, and I am yet unable to perceive how it can be.

Special comprehensive provisions are contained in the Assignments and Preferences Act for the winding-up of the assigned estate through the assignee, the assignor, the creditors and "inspectors" representing them, and the County Court Judge. Under sec. 33 of the Act, by which secs. 33 and 34 of the Creditors' Relief Act are made applicable, all questions respecting distribution are provided for, in addition to such other provisions on the subject as the Assignments and Preferences Act contains.

*See *Re Battrim* (1915), 7 O.W.N. 778.