

solicitor for the estate, is a debtor to the estate; that defendant has not managed the estate properly, and has not kept the accounts and so dealt with the estate as an assignee should do, and has acted improperly in selling or attempting to sell part of the assets to the wife of one of the insolvents; and that he has not called upon the secured creditors to value their security.

A fire occurred on the premises of the insolvents on 26th June, 1903, which destroyed a large quantity of lumber and two of the buildings, and after the fire, at an informal meeting of the creditors, the insolvents were requested by the unsecured creditors to make an assignment to Mr. Osler Wade. The insolvents, however, made an assignment to the defendant, the solicitor for the Quebec Bank.

After the assignment, at a formal meeting of the creditors, a motion was made to have one W. G. Wade appointed assignee in place of defendant, but the creditors, by a vote of 49 to 30, confirmed defendant as assignee.

A. C. McMaster, for plaintiffs.

D. L. McCarthy, for defendant.

MACMAHON, J.—. . . . Assignments for the general benefit of creditors are frequently made by insolvents to one of their creditors, or to some person named by the creditor; and the general body of creditors, if they object to the assignee, have the remedy in their own hands, for at the first meeting of creditors the majority in number and value may, under sec. 8 (1) of the Assignments Act, substitute another person . . . for such assignee. So that, if it were the fact that the insolvents, at the instance of the Quebec Bank, made the assignment to the solicitor for the bank, that did not prejudice the general body of creditors, for it was in their power to have removed him at the meeting which was called; but, instead of doing so, the majority of the creditors appeared to have confidence in him, for they continued him in the assigneeship.

The assignment being made to the solicitor of the bank cannot of itself be regarded as objectionable, so long as the assignee appoints an independent solicitor to act as solicitor for the estate. This is necessary in order that the duty of the assignee to the creditors may not conflict with his duty as solicitor to the bank.

I do not think the solicitor appointed by the assignee should longer continue to act as such, as he has been solicitor for the insolvents, and is largely indebted to the estate. His duty as solicitor may conflict with his duty as a debtor to the