

appear for the plaintiff on the record. The counsel replies: "It is true I am not appearing for the plaintiff on the record, but I am appearing for a creditor named Bennett, who has been authorised by the order of the County Court Judge to intervene and at his own expense to prosecute the appeal." To that answer the defendant's counsel raises the objection that, under the circumstances, the County Court Judge had no jurisdiction to make the order, and that it is invalid.

It thus becomes necessary for us to deal with this preliminary objection. The provision of the statute relied upon by counsel seeking to appeal in sub-sec. 2 of sec. 12 of R.S.O. 1914 ch. 134, and it reads as follows. "Where a creditor desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the estate, and the assignee under the authority of the creditors or inspectors refuses or neglects to take such proceeding after being required so to do, the creditor shall have the right to obtain an order of the Judge authorising him to take the proceeding in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the Judge may prescribe, and thereupon any benefit derived from the proceeding shall, to the extent of his claim and full costs, belong exclusively to the creditor instituting the same for his benefit, but if, before such order is obtained, the assignee signifies to the Judge his readiness to institute the proceeding for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, shall belong to the estate."

We are of opinion that the meaning of this section is, that, before a creditor can acquire control of the proceedings for his own benefit, he must proceed in the manner which we think is indicated by this section, namely, being of opinion that it is to the interest of the estate that some particular proceeding should be taken, it is his duty to move the estate to take that proceeding, not for his benefit, but for the estate's benefit, and not until he has adopted that preliminary course, and the estate has refused or neglected to comply with his request, is he entitled to an order, or has the County Court Judge any jurisdiction to grant him an order.

In this case the creditor Bennett did not in the first place move that the estate should prosecute this appeal; but, on learning that the assignee had notified the defendant that he, the assignee, did not intend to proceed with the appeal, then for the