" ance; and the said instrument shall be executed in duplicate, one of
" which shall be lodged in the office wherein the other papers in the case
" are hereinafter required to be finally deposited,—and the other shall be de-
" livered to the Assignees; and either of such duplicates purporting to be
" under such hand and seal, shall be received in all Courts in this Province,
" as *prima facie* evidence, that the same was executed on the day in which
" it purports to bear date, and that the Assignees named therein, were duly
" chosen and appointed, and accepted the office, and of their authority to
" bring and defend actions in that character."

The declaration having made no mention of such an instrument, it clearly does not establish *prima facie*, the right of the Assignees to sue in that capacity.

Then the 31st sec. of 7 Vic., cap. 10, enacts, " That the said instru-
" ment so signed and sealed, as aforesaid, shall vest and be construed to
" vest in the Assignees named therein, all the property of the Bankrupt," &c.

The Respondent not having declared upon the instrument described in this statute, his action wants the only basis which could possibly vest in the Respondent and Andrew Cowan, the bankrupt Estate of the said Jacob Dennison; and, consequently, a material link is wanting in the Respondent's title, as disclosed in his declaration.

Again, supposing the Estate of Dennison to have been vested in the Respondent and Andrew Cowan, as stated in the declaration, after the latter was removed, and before the remainder of the Estate not already disposed of, could be legally vested in the Respondent as sole Assignee, it was necessary for him to conform to the 32nd section of the same Act, regulating this matter; which enacts, after establishing the manner in which any Assignee may be removed:—

" That upon such removal, or upon any vacancy by death or other-
" wise, the said creditors may, in manner before mentioned, choose other
" Assignees in their place, who shall notify their acceptance, and obtain the
" same kind of instrument from the Judge or Commissioner, and give notice
" thereof, as the original Assignees are required to do; and all the Estate of
" the Bankrupt not before lawfully disposed of, shall forthwith and henceforth
" become vested in such new Assignees, as if they had been originally
" elected or appointed as aforesaid."

Nothing in the declaration shews that the Respondent even did obtain the instrument described above, the only legal title which could give him authority to sue as sole Assignee.

Notwithstanding these omissions, the Appellant's demurer was dismissed, and the case fixed for evidence.

At *enquete*, the Respondent failed to produce the documents above described, under the hand and seal of the Judge or Commissioner of Bankruptcy, the only means, as the Appellant contends, by which the Respondent's title could be made out.

To establish the original debt by the Appellant to Dennison, he examined one witness, John Murphy,—this witness being unable to prove the demand as set forth in the bill of particulars, stated that on the 21st June, 1842, there was a balance of £185 16s. 10d. due Dennison by the Appellant,