

The Legal News.

VOL. II. JUNE 14, 1879. No. 24.

POWERS OF ASSIGNEE.

A point which does not appear to have come up before, under Section 16 of the Insolvent Act of 1875, was decided by Judge Mackay in the case of *Evans v. Génèreux*. A writ of compulsory liquidation having issued, the official assignee, in whose hands the estate of the insolvents had been placed, immediately instituted, *de plano*, an action for the recovery of monies due to the estate. Exception was taken to this proceeding, on the ground that the order of the Court or Judge, required by Section 16 of the Insolvent Act of 1875, had not been obtained. It was answered that this was a proceeding of a conservatory nature. But, even so, as the Court held, no action can be brought by the assignee *ad interim* without judicial authorization. The terms of section 16 seem to be sufficiently free from ambiguity. "The assignee shall hold the same (the estate) in trust for the benefit of the insolvent and his creditors, and subject to the orders of the Court or Judge; and he may upon such order and before any meeting of the creditors, institute any conservatory process or any proceeding that may be necessary for the protection of the estate." In Clarke's commentary on the Insolvent Act, 25 pages are occupied with remarks and citations under this section, but no case similar to the above is referred to.

SHERIFF'S SALES.

Article 712 of the Code of Civil Procedure states that a purchaser who cannot obtain the delivery of the property, which he has bought at Sheriff's sale, from the judgment debtor, must demand it of the Sheriff, and upon the Sheriff's return or certificate of the refusal to deliver, "the purchaser may apply to the Court by petition, of which the debtor has received notice, and obtain an order commanding the Sheriff to dispossess the debtor, and to put the purchaser in possession." Can this

article be applied to a case where, not the debtor, but a third party, not in the case at all, is found upon the land sold? In *Trust & Loan Co. v. Jones*, an attempt was made to obtain a writ of possession under such circumstances, but Mr. Justice Mackay refused the order prayed for, holding that the Article of the Code must be restricted to cases where the *saisi* continues in possession after the Sheriff's sale and cannot be invoked for the purpose of obtaining the ejection of a third party.

ELECTION PROMISES.

The judgment in the Rouville election case is noticeable, because it is a case where a promise to do something for the advantage of the community generally proved fatal to the election. Sidewalks are an improvement much coveted in rural municipalities, and Mr. Bertrand appears to have pledged himself to construct some at his own expense in the event of his election. The Court held that this promise had been made with corrupt intent to influence votes in favor of the defendant, and the election was voided. In the Jacques Cartier [Dominion] election case of 1867, there was a good deal of evidence put in with a view to establish promises of a similar nature, but the judgment of the Court did not find the proof sufficient.

PROCEEDINGS SUSPENDED BY APPEAL.

The effect of an appeal is of course to suspend proceedings in the Court below upon the judgment appealed from. But where the plaintiff, before he is notified of the appeal, has taken proceedings in execution by attaching monies due the debtor by third parties, has the appeal the effect of relieving the garnishees from the obligation of retaining such moneys? The question is decided in the negative in *Dejardins v. Ouimet*. Everything must remain *in statu quo*. The debtor may be seriously inconvenienced by such lock-up of funds, but he suffers from his own neglect in not instituting his appeal within the delay allowed before proceedings in execution can be commenced.