

could apply for them themselves, would doubtless be granted. Again, under the 12th section of the Assignments and Preferences Act, the right to attack the chattel mortgage in question is exclusively that of the assignee; he insists upon that exclusive right; and the question has not yet been tried, at the instance of execution creditors, and determined in their favour, as it had been in Henderson's case. On what ground can his right, under this section, to prosecute the issue as to the validity against the creditors of the chattel mortgage in question, be denied; indeed how can that issue be duly tried in his absence? All these things lead me irresistibly to the conclusion that execution creditors' rights against an assignee, under the ruling in Henderson's case, cannot arise, at all events, until they have a judgment in their favour in the interpleader, or in some other binding way.

Something was said about "salvage;" but we are not dealing with mere equitable rights, or even mere common law rights, we are dealing with plain words of recent enactment, and must give effect to them, not to that which might be the law if we were at liberty to make it to get each case according to our individual notions. But is the word "salvage" applicable to such a claim as the execution creditors make? . . .

Nor can I see anything in the other points so much urged in the argument before me. The obvious fact that the mortgage, if made in fraud of creditors, is in a sense not void, but voidable, can surely make no difference. But it may be needful to point out that it is voidable, not void, in this sense, and only, because of the necessity, in almost all cases, that the creditor must reach out his hand to take the benefit of the law, must do some action shewing an election, as it were, to avoid it. It is not the judgment of any Court that makes the transaction void; it is the enactment or the common law; the transaction is absolutely void because of the fraud; the Courts do but find the fact and give judgment accordingly. It may be that in most cases litigation is necessary or advisable; but none the less a Sheriff, or other person having authority, may take the property as that of the fraudulent debtor; he needs no authorisation of any Court. If sued for trespass or in trover, he must succeed if the plaintiff's case depends upon a transaction vitiated by fraud on creditors. It is true that the 12th section of the Assignments and Preferences Act mentions only the right of suing; but, assuredly, if the assignee can obtain possession of the fraudulently transferred