

by payment, subject to the lien, if any, of an execution creditor for his costs, where there is but one execution in the sheriff's hands, or to the lien, if any, of the creditor for his costs, who has the first execution in the sheriff's hands."

In order to understand the effect of this enactment, it is necessary to have recourse to other sections of the Act to see what is meant by the words "an assignment for the general benefit of creditors under this Act."

The first section enacts that if any person in insolvent circumstances, or knowing himself to be on the eve of insolvency, voluntarily confesses judgment, or gives a warrant of attorney to confess judgment, with intent to defeat or delay his creditors, or to give any creditor a preference over his other creditors, every such confession or warrant of attorney shall be void as against the creditors of the party giving it.

The second section avoids as against the other creditors any gift or assignment of goods or other property made by a person at a time when he is in insolvent circumstances, or knows that he is on the eve of insolvency, with intent to defeat, delay, or prejudice his creditors, or give any of them a preference.

Then follows section three, which is important: its first subsection provides that nothing in the preceding section shall apply to an assignment made to the sheriff of a county in which the debtor resides or carries on business, or to any assignee resident within the province with the consent of his creditors as thereafter provided for the purpose of paying, rateably and proportionately, and without preference or priority, all the creditors of the debtor their just debts.

The second subsection enacts that every assignment for the general benefit of creditors which is not void under section two, but is not made to the sheriff nor to any other person with the prescribed consent of the creditors, shall be void as against a subsequent assignment which is in conformity with the Act, and shall be subject in other respects to the provisions of the Act, until and unless a subsequent assignment is executed in accordance therewith.

The fifth subsection states the nature of the consent of the creditors which is a requisite for assignment in the first instance to some person other than the sheriff.

These are the only sections to which it is necessary to refer in order to explain the meaning of section nine.

Before discussing the effect of the enactments to which attention has been called, it will be convenient to glance at the course of legislation in relation to this and cognate matters both in the Province and in the Dominion. The enactments of the first and second sections of the Act of 1887 are to be found in substance in sections 18 and 19 of the Act of the Province of Canada passed in 1858 for the better prevention of fraud. There is a proviso to the latter section which excepts from its operation any assignment made for the purpose of paying all the creditors of the debtor rateably without preference. These provisions were repeated in the Revised Statutes of Ontario, 1877, c. 118. A slight amendment was made by the Act of 1884, and it was as thus amended that they were re-enacted in 1887. At the time when the statute of 1858 was passed there was no bankruptcy law in force in the Province of Canada. In the year 1864 an Act respecting insolvency was enacted. It applied in Lower Canada to traders only; in Upper Canada to all persons whether traders or