

The appeal was heard by BOYD, C., LATCHFORD and MIDDLETON, JJ.

A. H. F. Lefroy, K.C., for the appellant.

Grayson Smith, for Fowler and Eckardt.

J. G. O'Donoghue, for the Queen City Foundry Co.

L. F. Heyd, K.C., for Gregson.

R. J. Maclellan, for the Sheriff of Toronto.

MIDDLETON, J., referred to the Creditors' Relief Act, as passed in 1880, which contained no such provision as that now found in sec. 6, sub-secs. 4 and 5, of the revised Act of 1909. He next referred to the amendment made in 1887 (by 50 Vict. ch. 8, schedule), after the decisions in *Reid v. Gowans*, 13 A. R. 501, and *Levy v. Davis*, 12 P. R. 93. Then, to the amendment made in 1888 (by 51 Vict. ch. 11, sec. 1), which seemed to be in conflict with the earlier amendment. These amendments came before the Court of Appeal in *Durrell v. Bank of Hamilton*, 15 A. R. 500. He then referred to the amendment of 1893 (56 Vict. ch. 5, sec. 12), by which 51 Vict. ch. 11, sec. 1, was repealed, and in lieu thereof it was provided that sec. 4 (1) and (2) of R. S. O. 1887 ch. 65, the section providing for distribution among all creditors, should not apply to moneys realised upon the sale of property under an interpleader order, but, upon the determination of the interpleader issue in favour of the execution creditors, the money, whether in the sheriff's hands or in Court, should be distributed among the creditors contesting the adverse claim. . . .

These provisions were carried without material change into the revision of 1897; . . . and the right of the interpleading creditors now emmeshed in the provisions of the Act of 1909 (9 Edw. VII. ch. 48) is found to have its real origin in the amendment of 1893.

This right so conferred upon those by whose exertions the fund is made exigible must not be defeated by some other general provision, unless this can be said to be the will of the legislature clearly expressed.

I think that the special provisions in favour of interpleading creditors may well be regarded as an exception to the general law regarding the distribution of assets either under the Creditors' Relief Act or the Assignments Act.

The legislature, in view of the division of opinion in the Court of Appeal upon the question whether goods when sold under an interpleader order were really sold under the execution, or whether, when once an interpleader application was heard, some new and