day of April aforesaid, and after the return day of the said writ, discharged from custody by the order of Mr. Justice Burns, a copy of which order he annexes to his return.

The venue in this action is in the County of York.

Special bail was entered on the 1st July, 1858, the bail being Peter James O'Neil, and John O'Donohue.

Judgment was entered on the 14th April, 1859, for £253 12s. 3d besides costs.

On the 15th April, 1859, a *Ca. Sa.* was issued and placed in the Sheriff's hands, to which the Sheriff has returned that the defendant was in his custody, on the 25th April, the return day of the said writ, having been surrendered by one of the bail (P. J. O'Neil) on 18th April; and that the said defendant was on the 20th April, discharged by order of Mr. Justice Burns.

It is shown by affidavits that O'Gorman was on 16th April, residing in the city of Buffalo, in the State of New York, that on that day O'Neil, one of the bail, without producing any warrant, or authority, violently took him, against his will, from the city of Buffalo, across the river to Fort Erie, in Upper Canada; and from thence through several counties of Upper Canada, to the gaol of the counties of York and Peel.

A writ of *Habeas Corpus* was obtained to release him from custody, and he was discharged by Mr Justice Burns, on 20th April. On 27th April, the second day after the return day mentioned in the *Ca. Sa.*, the Sheriff made his return to writ.

On the 27th April, 1859, the bail were sued on the recognizance.

No notice of the render had been served on the plaintiff's attorney before the defendant was discharged, (*Archb. Prac.* 818, 819, 820, 12 E. 254, 3 B. & P. 13.)

If the debtor was sufficiently rendered, notwithstanding the illegal manner of his arrest, he was rendered in time; and then the only question can be what is the consequence of his being discharged by order of a judge. Whatever took place that can be relied on as a render, took place in time to enable the bail to be discharged ex debito, justiæ, and if what was done amounts in law to a discharge of bail, the bail could and can plead it in bar of the action against themselves.

If an exonceretur be necessary in order to their perfect discharge, I will allow them to move for that in term; and the Court can take care that the bail shall not be prejudiced by the delay.

Summons discharged.

CHANCERY.

(Reported by THOMAS HODGINS, Esq., LL.B., Barrister-at-Law.)

(IN BANC)

PYPER v. MCDONALD.

Assignment for benefit of creditors—Limitation of Time—Assent.

A creditor entitled to an assignment, who does not execute it, but who does some act which amounts to acquiescence, is entitled to the benefit of the deed.

(28th April, 1859.)

This was a bill filed by the plaintiff as assignee for one John Henderson, who was a creditor of one Jeremiah Riordans, for whom the defendant was assignee. The bill set out the facts, and that the plaintiff went to the defendants office to execute the assignment, but his attention being called off to something else, he left under the impression that he had executed it. The answer stated that the plaintiff did call at the defendant's office, that the deed was produced, but that plaintiff never signified his assent to it; and that before the first dividend, defendant wrote to the plaintiff informing him of the fact and advising him to apply to this court for relief; but that he did not apply until some time after the dividend was declared.

Strong for the plaintiff.

A. Cro ks for the defendant.

The judgment of the court was delivered by

THE CHANCELLOR.—This is a bill by the assignee of a creditor to be allowed to come in and execute the deed of assignment in behalf of the party for whom he is assignee, although the time limited by the deed had elapsed—he having assented to the deed within the limited time. I have consulted the authorities bearing upon the point. In *Collins* v. *Reece*, 1 Coll. 675, Lord Justice Knight Bruce seems to hold parties strictly to the limitation in the assignment; but in *Rowarth* v. *Parker*, 2 K. & J. 163, Vice Chancellor Wood takes the opposite side, and refers to *Spottiswoode* v. *Stockdale*, Coop 102, and *Daneh* v. *Kent*, 1 Ves. n. 260. In the former case, Lord Eldon held, that if creditors who have not signed a deed, act under it, they treat it as valid, and equity will also act under it and treat it as valid; and in *Daneh* v *Kent*, the bill was filed by creditors who came in after the time limited, and it was held they should have the benefit. The exact point however does not seem to arise there, but I think as in *Spottiswoode* v. *Stockdale*, the creditor may be bound by parol, though the deed be not executed,—that his assent is expressed by his acting under it. In *Field* v. *Lt. Donoughmore*, 1 Dru. & W. 227, Sir Edward Sugden held, that it is not absolutely necessary that every creditor should actually subscribe the deed, if he assents to it. And in *Baron* v. *Mount* 24 Beav. 642, the same rule was acted upon,—and there it was laid down that a creditor who does not execute but does some act which amounts to acquiescence, is entitled to the benefit of the deed. It appears to me then, on the authority of these cases, that if there is a clear assent to the deed, the creditors may be bound by it although they may not have signed it within the time specified. But in the present case the evidence is not very clear, and if there could be further light thrown upon it, I would let the cause stand over and go on to a hearing. The plaintiff states that he went to the office of the assignee to execute the deed, and applied for it—that it was produced to him, that he resolved to execute it, but that his attention was called off to something else, and that he left the office under the impression that he had executed it. On the other hand the defendant states that he recollects no such application for the special purpose of executing the deed. It is clear that if a man in the first instance assents, but does not execute, he differs from one who by an afterth ught comes in, and claims a benefit. On the whole, it is more equitable that we should decree him entitled to come in and execute the deed.

WALKER v. PROVINCIAL INSURANCE COMPANY.

Contract for Insurance—Principal and Agent.

A party made a proposal for insurance but did not pay the amount of the premium on the ground that the Agent of the company agreed to take his note for the amount. The loss occurred a few days afterwards, and the bill was filed to enforce the contract.

Held that there was no contract, and that the agent was not authorized to bind the company, as alleged.

(28th April, 1859.)

This was a bill filed to compel the defendants to issue a policy. The facts of the case appear in the judgment of the Court.

Roaf for the plaintiff.

Barrett and *Burns* for the defendant.

The following cases were cited during the argument: *Prince of Wales Insurance Company* v. *Harding*, 4 Jur. N. S., 851; *Carpenter* v. *Mutual Safety Insurance Company*, 4 Sand Ch., 408, *Budle* v. *Chenango Mutual Insurance Company*, 2 Com. N. Y., 53; *Goodall* v. *New England Mutual Fire Insurance Company*, 5 Foster, N. H., 169; *Patteson* v. *Mills*, 2 Bligh, N. R, 519; *Wing* v. *Harvey*, 5 DeG. M. & G. 265; *Morteaux* v. *London Assurance Company*, 1 Atk 545; *Mead* v. *Davidson*, 3 A & E. 303; *Todd* v. *Read*, 4 B. & Ald. 211; *Russell* v. *Bangley*, *Ibid.* 410; *Bartlett* v. *Pentland*, 10 B. & C., 760; and *Arnould* on Marine Insurance, 1329.

THE CHANCELLOR.—This is a case for loss on a ship. It appears that on the 7th November, application was made to the company for an insurance on the plaintiff's vessel; and on the 16th November, the agent of the company informed the plaintiff that his application was approved and the risk accepted. The loss had occurred on the 6th November, but information of it did not reach the parties until the 14th or 15th November. The plaintiff had not paid the premium, but proves that it was the custom to pay the premium by a promissory note, and meets the difficulty by saying that the agent had agreed to so charge the amount to him. The answer of the defendants denies this, and replies that the agent had no authority to give credit, and that the agent applied to the plaintiff three or four times for the amount of the premium but that it was not paid. The plaintiff, in short, says "I insured;