

1862.

[Before the Hon. Sir J. B. Robinson, Bart., C. J.; the Hon. W. H. Draper,* C. B., C. J. C. P.; the Hon. Mr. Justice McLean;† the Hon. Vice-Chancellor Esten; The Hon. Mr. Justice Burns; the Hon. Vice-Chancellor Spragge; the Hon. Mr. Justice Richards, and the Hon. Mr. Justice Hagarty.]

ON AN APPEAL FROM A JUDGMENT OF THE COURT OF COMMON PLEAS.

Between THE BANK OF TORONTO, Appellants, and WILLIAM ECCLES AND OTHERS, Respondents.

Assignment for benefit of creditors—Preferred creditors—Power of debtor to insist on release by creditors.

Where a debtor had, before the passing of the statute 22 Vic., ch. 96, assigned and surrendered his estate and effects to trustees for the satisfaction of his debts without reserve, *held*, affirming the judgment of the Court of Common Pleas, that he might, under the then state of the law, stipulate for the payment of some of his creditors in full, and a ratable distribution as to the rest; and also, for a release to himself from all further liability. [ESTEN & SPRAGGE, V. CC. dissenting.] *Held* also, that such release may still be insisted upon without any reference to the amount of the dividend to be paid by his estate.

This was an appeal from a judgment of the Court of Common Pleas, as reported in the tenth volume of the *Statement* reports of that court, at page 282, where the facts of the case are distinctly set forth.

Mr. J. Hillyard Cameron, Q. C., for appellants.

Mr. M. C. Cameron and Mr. Anderson for respondents.

The cases cited by counsel appear in the judgments of their lordships.

Sir J. B. ROBINSON, Bart, C. J.—This is an action of ejectment brought by the plaintiffs, who claim the

* Gave no judgment in the case.

† Was absent when judgment was pronounced.