of creditors, and all other notices herein required to be given by advertisement (without special designation of the nature of such notice), shall be so given by publication for two weeks in the *Canada Gazette*.

It is quite clear that the notices referred to above, in which the nature of them is specially designated, are not included among those in which the notice mentioned in this clause is to be given. The clause after the description of the notice continues as follows:—"and in any case *the assignee or person giving such* notice shall also address notices thereof to all creditors," &c. and shall mail the same with the postage thereon, paid at the time of the insertion of the first advertisement.

Do the words "such notice" refer to the notices excepted by the first part of the clause? and the natural conclusion is, they do. These words seem to me to be used to distinguish one kind of notices from another; and to distinguish notices of meetings, and other notices, from these excepted in this clause, and whose nature is designated by the other clauses of the statute referred to by me This clause could not have been intended to have been applied to all notices, because the sheriff, who is required by 8th subsec. of the 3rd sec. to give notice of a writ of attachment being in his hands, could not by any possibility know who the creditors of the insolvent were, and could not address them by mail.

The same remarks will apply to the 13th subsec. of the same section. It will be observed, too, that the necessity of mailing to each creditor, when the notice in the newspaper is only for two weeks, is much greater than when it is for the same number of months. A creditor might probably overlook an advertisement for the shorter period, from absence or otherwise, which would not be so likely in the case of the longer.

I grant the discharge.

UNITED STATES REPORTS.

SUPREME COURT OF PENNSYLVANIA.

Hoffman v. Bechtel.

Where a creditor employs legal process against a debtor in the usual way and without unnecessary delay, it is *primâ facie* proof of such diligence in collecting his debt as will give him a claim against a guarantor.

But this presumption may be overcome by proof that the creditor had special knowledge of assets or opportunity of collecting his debt, and that his failure to do so was the result of bad faith, or neglect to do what a prudent creditor who had no other security but the debtor's obligation would have done under the circumstances.

The opinion of the court was delivered by

Strong, J.—The contract of guaranty is peculiar. Unlike that of an ordinary surety, it is collateral and secondary. The creditor must resort in the first instance to the debtor, and the guarantor is liable only after the debtor has proved insolvent, and the creditor has used due diligence to obtain payment from him unsuccessfully. But what is due diligence? Perhaps it is impossible to define it with any degree of certainty. It must vary with the circumstances of each case, and hence it is a question for the jury: *Rudy* v. *Wolf*, 16 S. & R. 79. It cannot be less than such as a vigilant creditor ordinarily employs to recover a debt for which he has no other surety than the obligation of the debtor. The guarantor has certainly a right to expect an honest and intelligent effort of the creditor to obtain payment from the person primarily liable. Unless it be shown that legal process would have been fruitless, it is the creditor's duty to employ that process without unnecessary delay, and if he does, there is a legal presumption that he had been duly diligent. This is all that was decided in *Kirkpatrick* v. *White*, 5 Casey 176, and *Gilbert* v. *Henck*, 6 Id. 205. But this presumption is not a conclusive one. There may be cases in which something more may be due than simply suing out legal process, and letting it run its course. This is intimated in both the cases last referred to. In *Kirkpatrick* v. *White*, Judge Lowrie said, due diligence does not require the creditor to accompany the collecting officer and show him personal property, *unless he has some special knowledge relating to it*; and in *Gilbert* v. *Henck* the same judge said that when the principal is not liable to a *ca. sa.*, and the plaintiff has issued a *fi. fa.*, and it is returned "*nulla bona*," he has done all that the law requires of him in favor of the guarantor, "unless it be shown that the principal had property in some other county that was known to the plaintiff, or ought to have been, and that could be reached by ordinary execution process." Here is a clear recognition of a duty resting upon the creditor holding a guarantee of a third person, to do more in some cases than employ legal process against the debtor, and let it run its undisturbed course. He may often know that the debtor has tangible property quite sufficient to satisfy the debt, which the sheriff, without his aid, cannot discover. Surely, due diligence, in such circumstances requires him to do more than put an execution into the hands of the officer of the law. No jury would doubt that vigilant creditors would do more if they had no surety or guarantor for the debt. It is not, then, to be taken as an universal rule that a creditor has done his whole duty to one who had guaranteed the debt to him, when he has sued out legal process against the debtor, and placed it in the hands of the proper officer. The most that can be claimed for it is, that it makes a *primâ facie* case of due diligence, which may be overcome by proof of want of good faith in the creditor, and by proof that the failure to recover from the debtor was in consequence of the creditor's neglect to do what other prudent creditors, in like circumstances would ordinarily have done: *Brown* v. *Brook*, 1 Casey, 210; *Overton* v. *Tracy*, 14 S. & R. 327.

These principles lead to the conclusion that the court below fell into error in rejecting some of the evidence offered by the defendant. The offer which we think should have been received was evidence to prove that the debtor was the owner of a lot and two houses thereon, worth two thousand five hundred dollars, upon which the judgment entered on the bond, guaranteed by the defendant, was a lien; that the lot was subject to prior incumbrances, amounting to about five hundred dollars; that under the execution issued by the plaintiff the lot was sold for seventy dollars to the wife of the debtor; that the plaintiff paid no attention to the sale, absented himself