registered in several counties wherein the lands belonging to the said estate are situate, and for other reasons, a cloud upon the title of the plaintiff, and that the defendants David Torrance and John Torrance and Thomas Cramp were co-partners in business, and were the largest creditors of the said James Daniel Mackay, and were *cestuis que trustent* under the said deed, and for that reason made defendants to this suit. The plaintiff therefore prayed that the said assignment to the said Thomas Cramp and Andrew Milroy might be declared to be void as against the plaintiff, and that the said Thomas Cramp and Andrew Milroy might be ordered to deliver up to the plaintiff all the books of account, vouchers, deeds, papers and documents, and all the goods and chattels belonging to the said estate, and to convey to the plaintiff the lands and premises conveyed to them by the said Mackay, and that the said Thomas Cramp and Andrew Milroy might be restrained by the order and injunction of this honorable court from intermeddling with the said estate and effects and from collecting the debts due to the said Mackay, and from retaining the possession of any of the goods and chattels belonging thereto, and from selling or disposing of any of the property real or personal, and that they might account to the plaintiff for such portion of the said property as had been converted into money and pay the same to the plaintiff.

The answer of the defendants admitted the matters of fact stated in the bill, and submitted to the judgment of the court as to whether the assignment to Cramp and Milroy was or was not void.

The cause came on for hearing on bill and answer.

*Roaf*, Q. C., for the plaintiff.

*Blake*, Q. C., for the defendants, Cramp and Milroy.

*S. H. Blake*, for David and John Torrance.

MOWAT, V. C.—The question argued in this cause was whether an assignment for the benefit of creditors, on which, as an act of insolvency, proceedings are afterwards taken in insolvency, is void as against the assignees appointed under the act.

I am clear that it is. I think this apparent from the whole scope of the act. It is impossible to suppose that when the legislature made such an assignment an act of insolvency, it was intended that the assignee appointed under the act should receive none of the property of the insolvent, and that notwithstanding their appointment the estate of the insolvent should be administered by the trustees whom the insolvent had himself chosen to name. Such a construction would render futile the enactment which makes such an assignment an act of insolvency and would practically deprive the creditors of the advantages which the statute gives them, for the winding up of the estate of an insolvent debtor. If in addition to the clear evidence of the intention of the legislature, which the scope and object of the act supply, a direct enactment declaring such assignment invalid against assignees under the act were necessary, I think sec. 8 contains enough for this purpose. Take for example the third sub-section of that clause which expressly renders null all contracts or conveyances made and acts done by a debtor with the intent fraudulently to impede obstruct or delay his creditors in their remedies against him, or with intent to defraud his creditors or any of them, and which have the effect of impeding, obstructing or delaying the creditors or of injuring them. The deed of assignment impedes and obstructs creditors in those remedies which the Insolvency Act affords, and on this ground similar clauses in the English Bankruptcy Act, 1 Jac. 1, ch. 15, sec. 2, and 6 Geo. IV. ch. 16, sec. 3, were decided in England to include voluntary assignments for the benefit of creditors: *Stewart* v. *Moody*, 1 C. M. & R. 777. As Lord Ellenborough observed in *Simpson* v. *Sikes*, 6 Maule & Selwyn, 312, "such a deed subjects the debtor's property to distribution without the safeguards and assistance which the bankrupt laws provide."

The assignment in question also attempts in some respects to put the debtor's property under a different course of application and distribution among his creditors from that which would take place under the insolvency law: *Dutton* v. *Morrison*, 17 Ves. 199. Thus it does not give the priority secured by the Insolvency Act to the clerks and other employees of the insolvent.

Decree for plaintiff.

## CORRESPONDENCE.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

GENTLEMEN,—A., residing in the First Division of a county, has a good action against B., living in the Tenth, the Division in which the cause of action arose. A. perceives that by suing B. in the Third Division, which adjoins the Tenth, it will be almost as convenient for the defendant B., the distance to the two courts from his (B.'s) residence being about the same; and that it will be much more convenient for him (A.), and that it will save his witnesses (two in number) twelve miles travel each, *i. e.*, twelve miles each way. He accordingly applies to the judge of the County Court under the 72nd sec. of the Division Court Act, upon affidavit, for leave to sue in the Third Division, setting forth the facts as above stated, according to the form prescribed by the 20th General Rule of Practice. The judge, however, refuses to grant the order, on the ground that the affidavit must show, *that the court for the Third Division is nearer to the defendant's (B.'s) residence, than the court for the Tenth.* He also holds that the application must be made under the 1st section of the statute 27 & 28 Vic. cap. 27, and not under the 72nd section of the Division Courts Act, Con. Stat. U. C.; and that under the former section it is necessary for the affidavit to show, that the Third Division Court, is *nearest* to the defendant. And the question has arisen, is this decision correct?