

The application of the doctrine of these cases induced the Legislature to intervene by an enactment which was contained in R. S. O. (1887) Cap. 124, sections 7 and 8, the effect of which was that when an action was brought by an assignee for creditors, attacking a fraudulent conveyance or fraudulent preference, or by a creditor (under the authority of a Judge's order) in the name of the assignee, then if the transferee of the property in question (defendant) had sold or disposed of such property, the plaintiff might seize or recover the moneys or other proceeds realized therefor as fully and effectually as he could have seized or recovered the property in question if it were still remaining in the possession or control of the defendant.

This provision was found to be ineffective to protect creditors, because it did not apply unless the insolvent debtor had made an assignment for the benefit of his creditors, and accordingly the Legislature extended the remedy of creditors by an Act (58 Vic. Cap. 23, sections 1, 2, 3 and 4), which came into force on the 16th day of April, 1895 (now contained in the revision of 1897, Cap. 147, sec. 10). This Statute enacts that in case of a transfer of any property which in law is invalid against creditors, if the person to whom the property was transferred shall have sold or disposed of, realized or collected, the same or any part thereof, the money or other proceeds realized by such person may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the original transfer was made, and such right to seize and recover shall belong not only to an assignee for the general benefit of the creditors of the said debtor, but shall exist in favour of all creditors of such debtor in case there is no such assignment.

Where there has been no assignment for the benefit of creditors, and the proceeds realized as aforesaid are of a character to be seizable under execution, they may be seized under the execution of any creditor issued against the debtor, and shall be distributable amongst the creditors under the Creditors' Relief Act, and the Acts amending the same or otherwise.

Where there has been no assignment for the benefit of creditors, and whether the proceeds realized as aforesaid are or are not of a character to be seized under execution, an action may be brought therefor by a creditor (whether an execution creditor or not), on behalf of himself and all other creditors, or such other proceedings may be taken as may be necessary to render the said proceeds available for the general benefit of the creditors; but this