and the action of the plaintiffs now is to get from the bondsman who is sued the amount that came into Lecours' hands with interest, and the costs of the rule.

The defence denies that Lecours ever received the money, and contends that, even if he did, he was not acting as an official assignee, but as an assignee of the creditors; and that the bond, therefore, does not reach his case; and the plaintiffs have no right of action, there being no privity between them and the sureties. The terms of the bond are that "if the principal faithfully discharges the duties of the said office and duly accounts for all monies and property which may come into his custody by virtue of the said office, the obligation of the sureties is to be void; and also, that in case the principal as such assignee fails to pay over the monies received by him, or to account for the estate or any part thereof, the amount for which the principal as such assignee may be in default, may be recovered from the sureties by Her Majesty or by the creditors or subsequent assignee entitled to the same, by adopting in the said Province such proceedings as are required to recover from the sureties of a Sheriff or other public officer."

These are also the precise words of section 28 of the Insolvent Act of 1875. Therefore, not only by law, but by the express terms of the bond which the sureties themselves have given, there is a right of action vested in the creditors.

As to the receipt of the money by Lecours, and his default to pay it over, the evidence, in my opinion, sufficiently proves the facts.

The remaining point is whether Lecours not having been the official assignee to whom the writ was addressed, his acts are covered by the bond. This instrument on the face of it, is declared to have been executed "in pursuance of an Act further to amend an Act respecting the security to be given by officers of Canada;" and also to have been given in pursuance of the Insolvent Act of 1875. The first mentioned Act, which is chap. 19 of the 35th Vict., was referred to by the plaintiff. It certainly tells us what is the effect of such a condition as this in certain cases; but this is not one of them. That statute was passed to give effect to the ordinary condition found in the bonds of public officers, when there had been a legislative extension or change of the officer's duties. Here the point is whether the assignee was acting in virtue of his office, although appointed by the creditors. The Insolvent Act, sec. 28, says the security is to be given to Her Majesty, and for the benefit of the creditors of any estate "which may come into his possession under this act;" and whether it comes into his possession in one way or the other, either by having the writ addressed to him, or by his being subsequently appointed, would seem to make no difference.

There are two other provisions tacked to this section, marked *a* and *b*. The first gives power to the creditors to exact further security from the assignee; and upon this Mr. Clarke observes that the additional security which may be called for under (*a*) is for the benefit of the creditors of the estate. The second (*b*) says that the official assignee is an officer of the court, subject to its summary jurisdiction, and shall be accountable for the monies, property and estates coming into his possession as such assignee, in the same manner as sheriffs and other officers of the court are. Mr. Clarke on this observes: "It would seem that if the creditors' assignee is also an assignee appointed by the Governor-in-Council, and has already given security, under section 28, he is not bound to give fresh security under this section, though he may be called upon to increase it. But if he has not given security when chosen assignee by the creditors, this section compels him to do so to such amount as the creditors may then fix. It seems intended chiefly to meet the case of the creditors' assignee not being an official assignee, and not having already given security to the Crown."

I hold, therefore, that the bond here does cover the plaintiff's case; Lecours' security was not increased by the creditors, but it reaches to what he has done.

A manuscript report has been lent to me of a case tried last year by Chief Justice Hagarty, in Ontario, and in which that learned judge found for the defendant in a very similar case to this (*Miller*, assignee, v. *The Canada Guarantee Co.*) on the ground that the default was committed as creditors' assignee, which was not covered by the bond. His Lordship left the point, however, to the Court, and I am not aware for which party the verdict was finally entered. I must decide the present case by my own construction of the statute, and I think the plaintiff is entitled to judgment. Any other construction would necessitate in all cases where the creditors appoint an assignee, that new security should be given, which is not what the law has said. Judgment for plaintiff for amount demanded.

Barnard & Co. for plaintiff.
Lacoste & Co. for defendant.