

he was afterwards appointed one of the judges of the Court of Appeal, he was never able to undertake any judicial duties. He sought relief from the painful disease (gout) which afflicted him by a journey to a milder climate, from which he returned only a few months before his death.

Though the Law Society desired that the remains of one so eminent in the profession should be paid the highest mark of respect by them as a body, the funeral was, at the earnest wish of the bereaved members of his family, quite private, though numerous attended.

RIGHTS AND LIABILITIES OF OFFICIAL ASSIGNEES.

The case of *Archibald v. Haldan*, decided by the Queen's Bench during last Easter Term, is one of considerable interest to official assignees, and indeed to all those who are in any way connected with proceedings in insolvency.

The action was brought by a mortgagee against an official assignee, for the wrongful taking and detention of certain chattels covered by the plaintiff's mortgage, and the two leading questions raised upon the argument were:

1st. Whether an official assignee is a public officer within the meaning of Con. Stat. U. C. c. 126, and is, under section 10 of that statute, entitled to notice of action; and 2ndly. Whether a mortgage creditor of the insolvent can sue an official assignee who has sold the mortgaged chattels among the other effects of the insolvent.

As to the first of these questions, Wilson, J. held, that though the tendency of the English cases, and the dictum of Best, C.J., in *Haly v. Mayor of Lyme*, 5 Bing. 91, are in favor of considering a sheriff, or even a bishop, or a clergyman in certain cases, as public officers (and an official assignee would surely come within such a category); yet, by the decisions of our own courts a sheriff has been held to be without the scope of the statute when acting even as an officer of the court in a civil suit between private parties (*McWhirter v. Corbett*, 4 U. C. C. P. 203), and that, by at least a parity of reasoning, official assignees cannot be considered public officers within the meaning of the act, and are not therefore entitled to notice of action.

As to the second question, after quoting the 50th section of the Insolvent Act of 1869, which had been cited during the argument as an insuperable bar to the plaintiff's right of action, and which declares that

"Every interim assignee, guardian and assignee, shall be subject to the summary jurisdiction of the court or judge in the same manner and to the same extent as the ordinary officers of the court are subject to its jurisdiction, and the performance of their respective duties may be compelled, and all remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, hypothec, lien or right of property upon, in, or to any effects or property in the hands, possession or custody of the assignee, may be obtained by an order of the judge on summary petition in vacation, or of the Court on a rule in term, and not by any suit, attachment, opposition, seizure or other proceeding of any kind whatever; and obedience by the assignee to such order may be enforced by such judge or court under the penalty of imprisonment as for contempt of court or disobedience thereto, or he may be dismissed, in the discretion of the court or judge."

The learned judge went on to remark:

"The words, 'all remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, hypothec, lien or right of property, upon, in or to any effects or property in the hands, possession, or custody of the assignee, may be obtained by an order of the judge on summary petition, and not by any suit,' appear to me to apply to proceedings between creditors, parties to the insolvency proceeding, or who have it in their power to become parties thereto. In that respect it is like the private forum, established by arbitration between the Trustees of the Savings Bank and its depositors: *Crisp v. Bunbury*, 8 Bing. 394, referred to in the argument.

"The statute cannot prevent (unless by the very plainest words, which I think have not been used) a person who is not a creditor at all, and whose property, lands, goods, money and other effects have been wrongfully taken as the property of the debtor, from pressing his redress in the ordinary courts of law."

The section above quoted, like too many others upon our statute book, appears to stand greatly in need of judicial interpretation if not of legislative amendment.

If, on the one hand, as appears from the judgment, no meeting of the creditors was ever called, and the sale was made by the official assignee on his own responsibility, and without authority from either the creditors or the judge, it certainly would be unjust that the