

HIGH COURT OF JUSTICE.

Divisional Court.] GILLARD v. MILLIGAN. [Oct. 25, 1897.

*Assignments and preferences—Costs of first execution creditor—Lapse of execution after assignment—Right to lien, R.S.O., c. 124, s. 9.*

There is nothing in the Assignments and Preferences Act, R. S. O. c. 124, which supersedes the execution of a first execution creditor for his costs, or which forbids him realizing them out of the debtor's goods, notwithstanding an assignment is made. In an action by such an execution creditor, who, after assignment by the judgment debtor took no active steps to enforce his execution against the assignee and his solicitor, who has received from the estate in settlement of an action a larger sum than the amount of the costs, and applied it in payment of the assignee's costs of administering the estate and the solicitor's costs of the litigation.

*Held*, that as there was no fund available for division among the creditors, and as the plaintiff might have proceeded under his execution to realize his costs but did not do so, he could not recover.

*Scmble*.—Even if he was entitled to take such a position, and to rank on the estate as a preferred creditor for the costs, he could not treat the whole assets of the estate as subject to a trust in his favor prior to any other charge. He is in no better position than other creditors proving claims, except being entitled to payment in full of the costs out of such estate funds as were divisible among creditors, that is after payment of the costs of collection and assignees' charges.

*J. J. Scott*, for the plaintiffs. *J. M. Glenn*, for the defendants.

Ferguson, J.] IN RE PONTON. [Oct. 29, 1897.

*Life insurance moneys payable to infants domiciled outside jurisdiction—Appointment of trustee to receive the shares of infants—60 Vict., c. 36, s. 155 (2).*

Upon the application of the infants who were domiciled in the State of New York with the consent of their mother, the grandfather, a resident of the Province of Quebec, was appointed trustee to receive the insurance moneys upon giving security to the satisfaction of the Registrar, the bondsmen being within the jurisdiction. The insurance company were discharged upon payment to the trustee of the moneys in their hands.

*W. F. Burton*, for petitioner. *F. W. Harcourt*, for infants.

Ferguson, J.] IN RE SAYLOR. [Oct. 29, 1897.

*Insurance moneys—Infants—Foreign trustee—Security—60 Vict. c. 36, s. 155 (5).*

The mother of infants entitled to insurance moneys, having been appointed guardian of the infants in the State of Ohio, and having given security there, was appointed trustee to receive these moneys without giving security in this Province, upon its being shown that security had been given in the foreign country to the satisfaction of the Court there, and upon its being shown that the infants resided within the jurisdiction of a foreign court.

*W. F. Burton*, for the insurance company, as also for the petitioner.