labor for the garnishee, and performed since the date of his assignment, but not protected by 37 Vict. ch. 13, inasmuch as the claim of the primary creditor accrued prior to 1st Oct., 1874—and the amount was not more than adequate for the support of himself and family.

In September, 1880, the primary creditor issued the garnishee summons in this cause, and when the case came up for trial on the 2nd November, 1880, the assignee intervened and claimed the amount so earned by the insolvent, and on the same day the insolvent filed a supplementary list of creditors, in which he placed the name of the primary creditor for the amount of the account due in 1874—thus placing the primary creditor in the same position in regard to him and his estate as if his name had been inserted in the first list of creditors.

The assignee contended that under the Insolvent Acts of 1869 and 1875, and amendments, he was entitled to the amount due by McIntyre, as part of the insolvent's estate, and liable to distribution for all his creditors.

Burritt, for the primary creditor, contended that the assignee was not entitled to the amount coming from the garnishee, on the ground that the amount, being for the *personal labor* of the insolvent, did not pass to the assignee; and that as the assignee could not claim it, the primary creditor who had resorted to this garnishee proceeding and having intercepted the money in the garnishee's hands, had the only right to it, and could apply it to the satisfaction of his claim—notwithstanding the palpable preference this would give him over other creditors.

DEACON, Co. J. The question is now whether the assignee of the insolvent's estate, representing all the creditors, or this one creditor, Mr. Findlay (who has stepped out of the ranks, and is proceeding on his own behalf, irrespective of the provisions of the Insolvent Act), or either of them, is entitled to the money earned by this insolvent by his personal labor.

I am of opinion that neither of them is so entitled.

That the Assignee is not entitled to claim the money I think is quite clear from an examination of the cases of *Chippendall* v. *Tomlinson*, 4 Doug., 318; *Williams* v. *Chambers*, 10 Q. B. 337; *White* v. *Elliott et al.*, 30 U. C. R., 253; *Wadling* v. *Oliphant*, 1. Q. B. D. 145.

It is not alleged or pretended that the insolvent has accumulated the amount indicated by Lord Alvanley, C.J., as in 4 Doug. * * *

Then as to the right of this primary creditor, who is now on the same footing, in all respects, as the rest of the insolvent's unsecured creditors, there is nothing in any of the cases that would support the contention that one creditor (without any exceptional right), by adopting proceedings outside of the Insolvent Act, could obtain from either the insolvent himself or from his estate (and for the personal advantage and benefit of such creditor alone) what the assignee of the insolvent's estate, who represents all the creditors, and who is bound to treat all alike, without the slightest approach to preference or priority, could not be allowed to do. If, as against such assignee, the *personal earnings* of the Insolvent are exempted, for the necessary and humane purpose of allowing him to live at all, surely the same *ratio decidendi* will apply, with at least equal force, to such a proceeding as the present on the part of one of the creditors, contrary, as I take it, to the whole tenor and policy of the Insolvent Acts—see sections 16, 39 and 83, also *Patterson* v. *McCarthy*, 35 U. C. R. 14; *Blakeley* v. *Hall*, 21 C. P. 138; *Re Fair* and *Bell*, 2 Ap. Rep. 632. The general purpose and policy of the Act is to produce *equality* in distribution among the creditors (holding claims and having rights only of a common and equal character and nature), and when an assignment is made, the whole estate and effects of the Insolvent should be wholly administered by the Court in the Insolveney proceedings. See *Re Fair* and *Bell*, *ante* 636.

The result of my examination of authorities is that what the Assignee, who is trustee for and represents all the creditors alike, cannot be permitted to do, no one of such creditors (not holding any exceptional right, position or lien) stepping out of the ranks and adopting a by-proceeding, can be allowed to accomplish on his own behalf and for his own individual benefit. I have not been disappointed in being unable to find any authority which would uphold his doing so. What the Assignee, acting on behalf of all the creditors, may be able to accomplish in case this Insolvent acccumulates any considerable sum of money, or any amount beyond what may be sufficient for the necessary