

and there are some indications, in some of the opinions of the Judges, that their rights arose out of that fact; but there is no decision upon the point, the decision in truth creates the difficulty; and I have no right to shelter myself behind anything but that which was decided in that, or in any other, case; and so the duty falls upon me to lay down, for the first time, the point of beginning of the rights of execution creditors under the 6th section of the Creditors' Relief Act over the rights of an assignee under the 12th section of the Assignments and Preferences Act.

Some things bearing upon the question can hardly be controverted: the Legislature in passing these enactments was sailing as close to the wind of an insolvency or bankruptcy law as it was deemed it lawfully might, "bankruptcy and insolvency" being expressly excluded from its legislative powers. It, therefore, omitted the most prominent features of such a law, compulsory bankruptcy or insolvency and a discharge of the bankrupt or insolvent from his debts; but, in case of a voluntary assignment, applied to it substantially all the features of the federal Insolvent Act which had been in force for a good many years, but had been repealed; and, in cases in which a voluntary assignment could not be obtained, provided for something in the nature of a distribution of a bankrupt's or insolvent's estate through the proceeding in the Sheriff's office, as set out in the Creditors' Relief Act. There were the two cases to be dealt with; the one, that in which a voluntary assignment could be obtained, and to which, short of a discharge of the debtor, in all substantial matters the estate was brought under the repealed insolvent laws, the very words of those repealed being largely employed; and the other, that in which no assignment could be procured, and so a special method of giving equality between creditors had to be devised.

And so it seemed to me that once the assignment was obtained, once there was a person duly empowered to deal with all the estate of the insolvent, it was right and proper, and intended by the Legislature, that the assignee alone should wind up the estate, superseding the Sheriff, and putting an end, not only to two windings-up of the one estate, with substantially two assignees, but also putting an end to the cost and formality of proceedings in the Sheriff's office or otherwise in the Courts. That it was only when an assignment could not be obtained that the much more cumbersome methods of the Creditors' Relief Act should continue—a sort of necessary evil. And so full effect