

CIRCUIT COURT.

MONTREAL, Oct. 31, 1882.

Before PAPINEAU, J.

DUPUY es qual. v. UNION BANK of L. C.

DUPUY es qual. v. CHARLES N. WALTERS.

DUPUY es qual. v. OTHERS.

Insolvent estate—Recourse against creditors.

Held, that where an Insolvent Estate has no assets, the creditors cannot be called upon to pay, in proportion to the amount of their claims, a judgment obtained against the assignees of such estate.

PAPINEAU, J., in rendering judgment, stated the facts to be as follows:—

In 1876, Perkins as assignee to the estate of J. Phelan, caused an illegal seizure to be made of the goods of one Trempe.—Trempe sued Perkins, in his capacity of assignee, and obtained judgment for damages arising from this illegal seizure—and this judgment, rendered by the Superior Court, was confirmed in Review.

Trempe, after obtaining this judgment, became himself an insolvent; and the present plaintiff Dupuis, who was appointed his assignee, took out execution against Perkins as assignee of Phelan. He received a sum on account, but there being no more assets of Phelan's estate, he demands payment from the creditors of the latter; dividing the amount amongst them in proportion to their claims.

As to the Union Bank, there is no doubt that the action cannot be maintained as regards it, as it is proved that they never filed a claim, and were not in fact creditors of Phelan; the notes signed by him, and held by the Bank, being paid at maturity, by the endorsers.

In the other cases the question arises whether in law the defendants, creditors of Phelan's estate, are liable for the acts of Perkins his assignee. Perkins made an illegal seizure of the goods of Trempe. Either he made it on his own responsibility, or with the authorization, express or implied, of the defendants.

In the first case, having acted on his own responsibility, he alone will be liable.

The plaintiff makes no proof that Perkins was specially or expressly authorized to do the illegal act for which he has been condemned; there is nothing also to prove any implied authority from the defendants. Not acting,

therefore, under their express, or even implied authorization, Perkins was not the agent of the defendants, and could not bind them as such.

There remains his capacity of assignee. In this capacity, of assignee to the insolvent's estate, could he bind the creditors? In order to answer this question we must consider what is an assignee under the Insolvent Law. He is an Officer of the Court,—the Act states so expressly. He also represents the insolvent, in the sense that he can exercise all the rights which belonged to the insolvent at the time of his bankruptcy, and those which may afterwards accrue to him up to the time when he ceases to be under the operation of the Insolvent Law; in a word, he is seized of all the assets of the insolvent, except those which the law declares exempt from seizure: (Insolvent Act of 1875, Sect. 16) and he is seized of them for the benefit of the insolvent and his creditors.

The assignee cannot act as attorney or agent of a creditor of an insolvent, except when authorized by a judge. (Insolvent Act, Sec. 32 and 33.)

Section 36 authorizes the creditors and inspectors to give instructions, as to the sale and liquidation of the assets of the insolvent.

Section 38 says that the assignee shall exercise all the rights and powers of the insolvent in relation to his property and estate.

The powers of the Assignee do not extend beyond the property of the insolvent; and section 125, which places the assignee under the summary jurisdiction of a Judge, or of the Court of which he is an Officer, only renders him liable to *la contrainte par corps* in respect of his duties in reference to the estate and the property of which it is composed.

The assignee only represents the insolvent in so far as regards the estate of the latter, and can only act, in reference to the same, in conformity with the law. If he acts in contravention to the law he is subject to punishment by the Court. If he acts beyond the scope of the duties which the law imposes upon him, it can only be on his individual responsibility; unless there be an authorization by the creditors, or in default of this, of the inspectors. The plaintiff does not ground his case on either one or other of these authorizations.

The assignee has no other rights, in reference