

mortgage set aside as being an unjust preference, and made to hinder, defeat and delay creditors under the statute. And the learned Judge at the trial has given a decree to that effect, and that is not impeached. But it is claimed on behalf of the plaintiff that he was entitled to consequential relief. The case of *Cummings v. Taylor*, 28 S. C. C. 337, not to mention the English cases, is against him. He is to go on with his judgment and execution. But there is a statute, copied from an Ontario Act, passed no doubt to help a plaintiff in such a case, that is chapter 31 of the Acts of 1903-4, and the plaintiff claims that under that he is entitled to have an account of the proceeds of the goods taken by the defendant. He has the general prayer in the statement of claim.

The statute provides:—

“In case of a transfer of a property, which in law is invalid against creditors, if the person to whom the transfer was made shall have sold or disposed of, realised or collected the property or any part thereof, the money or other proceeds may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the transfer was made, and such right to seize and recover shall belong not only to an assignee for the general benefit of the creditors of the said debtor, but in case there is no such assignment, shall exist in favour of all creditors of such debtor.

“(2) Where . . . the proceeds are of a character to be seizable under execution they may be seized under the execution of any creditor and shall be distributed, &c.”

(3) Contains a provision for an action whether the proceeds realised as aforesaid are or are not of a character to be realised under execution on behalf of himself and other creditors, &c. &c., to make the proceeds available for creditors.

(4) This section shall not apply as against innocent purchasers of the property.

This brings the question down to whether the defendant has “money or other proceeds,” or proceeds which are available.

It appears that Campbell had against the debtors a claim for rent of the shop. On the 5th of May he distrained for rent up to the 1st of April, but under this warrant it