

is as follows: "And it is further ordered that any benefit derived from such proceedings shall, to the extent of the claim of the said John A. Lawson and full costs, belong exclusively to the said John A. Lawson."

From this order the assignee appeals, on the ground that the learned Judge had no jurisdiction to grant such an order.

On behalf of Lawson it is contended that sec. 12 of the Act respecting Assignments and Preferences by Insolvent Persons, being R.S.O. 1914 ch. 134, confers such jurisdiction. Sub-section 1 of sec. 12 is as follows: "Except as in this section is otherwise provided, the assignee shall have the exclusive right of suing for the rescission of agreements, deeds and instruments or other transactions made or entered into in fraud of creditors, or in violation of this Act."

Then follows sub-sec. 2 of sec. 12, which declares: "Where a creditor desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the estate, and the assignee, under the authority of the creditors or inspectors, refuses or neglects to take such proceeding, after being required so to do, the creditor shall have the right to obtain an order of the Judge authorising him to take the proceeding in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the Judge may prescribe, and thereupon any benefit derived from the proceeding shall, to the extent of his claim and full costs, belong exclusively to the creditor instituting the same for his benefit," etc.

We think that these two sub-sections must be read together, and that the proceeding contemplated by sub-sec. 2 is one which, if successful, recovers some asset for the estate.

The successful resistance of a creditor's claim adds nothing to the assets, although it reduces the amount of creditors' claims.

If the learned Judge's order were allowed to stand, then the effect of it would be that, should Lawson succeed in defeating the claims in question, he would rank on the estate with creditors not in respect of a creditor's claim, but because of his defeating a claim to be a creditor.

We are of opinion that the section is not open to such construction, and that this appeal should be allowed.

We are not satisfied with the conduct of the assignee; and, therefore, we give him no costs, either here or below.