[HIGH COURT OF AUSTRALIA.]

ARMSTRONG . . . . . APPELLANT;
CLAIMANT,

AND

WILKINS . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

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SYDNEY, *Aug.* 5, 8, 27.

Rich, Dixon and McTiernan JJ.

Bankruptcy—Deed of arrangement—Assignment of property—Vesting in trustee—Rights of execution creditor—Delivery of writ of execution after execution of deed but before registration—Validity of deed before registration—Bankruptcy Act 1924-1933 (*No.* 37 *of* 1924—*No.* 66 *of* 1933), *Part XII., secs.* 192 (3), (4), (4A), 193 (1) (*a*), (*b*), (2), 195.

Nothing in sec. 192 or in sec. 193 of the *Bankruptcy Act* 1924-1933 requires the conclusion that there is a postponement, until compliance with the requirements of sec. 193, of the vesting in the trustee of a deed of assignment to which Part XII. of the Act applies of property of the debtor which otherwise would vest immediately upon the execution of the deed.

After execution by a debtor of such a deed of assignment and communication of it to some of his creditors in such circumstances as to make it certain that those creditors intended to assent to it and were understood as doing so, another creditor delivered a writ of execution to the bailiff of a District Court and goods of the debtor comprised in the deed of assignment were seized pursuant to such writ. The requirements of sec. 193 of the *Bankruptcy Act* were subsequently complied with in relation to the deed.

Held that the trustee under the deed was entitled to the goods as against the execution creditor.

Decision of the Supreme Court of New South Wales (Full Court): *Wilkins* v. *Willis*; *Armstrong, Claimant*, (1940) 40 S.R. (N.S.W.) 279; 57 W.N. (N.S.W.) 114, reversed.

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APPEAL from the Supreme Court of New South Wales.

A judgment was obtained by Roy Edgar Wilkins against Francis John Willis in the District Court of New South Wales. On 15th July 1939, a writ of execution was delivered to a bailiff of the District Court for execution against the goods of Willis in satisfaction of the judgment, so that by virtue of sec. 29 of the *Sale of Goods Act* 1923 (N.S.W.) the property which Willis then had in any goods became bound by the writ. Prior to this, on 12th July 1939, Willis and one Claude Fenton—who together had carried on in partnership the business of produce merchants—had executed a deed of arrangement under Part XII. of the *Bankruptcy Act* 1924-1933, of all their property to the trustee therein named, Frank Douglas Armstrong, for the benefit of their creditors generally.

The trustee having made a claim to the separate goods of Willis in reliance on this deed, and a notice of the claim having been given to Wilkins, the execution creditor, an interpleader summons was issued in order that the respective claims of the trustee to deal with the goods under the deed, and of Wilkins to have them applied in satisfaction of his execution, might be adjudicated upon.

The deed of assignment, which included the separate estate of Willis and of Fenton respectively, was executed by the parties on 12th July 1939 in the presence of Donald Duncan Gillies, the relieving manager of the Glen Innes branch of the Bank of New South Wales, which was the largest creditor, the sum owed to it being £1,573 5s. 6d., and of Leslie Arnold Small, the representative of David Cohen & Co. Pty. Ltd., the second largest creditor, to which firm the sum of £1,449 2s. 1d. was owed. Small attested the signatures of the assignors and of the trustee. Immediately after the deed had been executed that fact was formally communicated by the trustee to Gillies and Small, as the representatives respectively of the two above-mentioned creditors. On 13th July the trustee communicated the deed to a creditor to which the sum £254 18s. 4d. was owed and on the following day the deed was communicated to another creditor.

There was not any positive evidence that any of these creditors had assented to the deed, nor was there any evidence that any of such creditors had dissented therefrom.

The position of the separate estates as shown in the deed was as follows:—Fenton—assets, £698 13s., liabilities, £4 17s. 6d.; Willis—assets, £5,137 12s. 3d., liabilities, four secured creditors, £257 16s. 5d., eight preferential creditors, wages, £110 10s. 4d., and seventy-four ordinary creditors, £6,033 16s. 2d.—in the case of thirty of such ordinary creditors the debt owed to each was less than £10.

The joint estate showed assets, nil, and liabilities, £707 6s. 10d.

The deed of assignment was registered pursuant to the *Bankruptcy Act* 1924-1933 on 31st July 1939.

A decision given by the District-Court judge upon the interpleader summons in favour of the execution creditor was, by majority, affirmed by the Full Court of the Supreme Court of New South Wales: *Wilkins* v. *Willis*; *Armstrong, Claimant* (1).

From that decision the trustee appealed, by special leave, to the High Court.

The relevant statutory provisions are sufficiently set forth in the judgment of *Rich* and *Dixon* JJ. hereunder.

A. R. Taylor, for the appellant. A deed of arrangement is not void or without effect unless and until it is registered. Sec. 92 is not incorporated in Part XII. of the *Bankruptcy Act* by sec. 199 (*Re Bartle* (2); *Re Moloney's Deed of Arrangement* (3); and *Re Sharpe's Deed of Arrangement* (4)). Sub-sec. 4A of sec. 192 of the Act was inserted in 1932, and was intended to bring about the same effect under Part XII. of the Act as sec. 92 does in relation to bankruptcies. That sub-section does not extend the operation of sec. 199 (1) (*b*) so as to incorporate sec. 92 in Part XII. (*Re Marsden's and Houldey's Deed of Arrangement* (5)). It was not suggested in any of those cases, nor in *Ellis & Co.* v. *Cross* (6), that until there had been registration of the deed it was a nullity. The word "property" in sec. 192 (1) has not the same meaning as that word as used in sec. 192 (4A). Sub-sec. 4A does not deal with property comprised in the deed; it deals with the property subject to the distress or

(1) (1940) 40 S.R. (N.S.W.) 279; 57 W.N. (N.S.W.) 114.
(2) (1929) 1 A.B.C. 70.
(3) (1931) 3 A.B.C. 275.
(4) (1932) 5 A.B.C. 60.
(5) (1932) 5 A.B.C. 72.
(6) (1915) 2 K.B. 654.

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execution as the case may be. A deed of arrangement becomes effective immediately upon the execution thereof; if, however, it is not registered within the period prescribed by the Act it becomes ineffective at the expiration of that period.

[RICH J. referred to *In re Zakon*; *Ex parte The Trustee* v. *Bushell* (1).]

That case is not an authority for the proposition that the deed has no effect until it has been registered. The question in *Re Plummer*; *Ex parte Trustees Executors and Agency Co. Ltd. and A. Kellaher* (2), referred to in the court below, was as to the meaning of the expression " execution of a deed of arrangement " as used in sec. 88 of the Act; that case has no bearing upon the particular matter involved in this case. The same principles should be applied as were applied in *Adnitt* v. *Hands* (3): see also *Garrard* v. *Lauderdale* (*Lord*) (4) and *Johns* v. *James* (5).

Moverley (with him *Officer*), for the respondent. The deed now under consideration did not operate to confer upon creditors generally any effective interest as at the date upon which the writ of execution was lodged. The mere signing of a deed under Part XII. and communicating it to one or two creditors does not create on those creditors for the benefit of creditors generally any interest which would deflect a right which an execution creditor retains by delivery of the writ. There is not any portion of Part XII. which deprives a person who has not in any way become bound by a deed or assented to it of any legal right or remedy which he may have. Although a deed is so signed, a person who has not become bound by it is at liberty to exercise his rights. One of the rights of a creditor is to issue execution. The scheme of Part XII. is to enable the trustee under the deed or any creditor who has assented thereto to make an application to the court to stay proceedings in any execution: See sec. 192 (3). If that is not done execution may become complete, and, if it does so before the provisions of sec. 193 have been complied with, an indefeasible title is acquired by the execution creditor. Such a result is indicated by sub-sec. 4A of sec. 192

(1) (1940) 1 Ch. 253, at p. 257.
(2) (1936) 9 A.B.C. 76.
(3) (1887) 57 L.T. 370.
(4) (1830) 3 Sim. 1 [57 E.R. 901].
(5) (1878) 8 Ch. D. 744.

because there a first charge or preference is created in favour of such execution creditor, but only because he has been deprived of a right. Secs. 197A and 198 are the only provisions in Part XII. which in any way affect the right of a creditor who does not become bound by the deed. There is no operation whatever to be given to a deed which is subscribed to by a class of creditors in number short of the majority prescribed by sec. 193. Sub-sec. 4A of sec. 192 contains a direct provision for the vesting of property which would be entirely unnecessary if the property had vested. For that reason *Ellis & Co.* v. *Cross* (1) and that type of case have no application to this case. The point here is not one of revocability or irrevocability, but what is aimed at by Part XII. If the position is that a deed never obtains the support of a majority of creditors then it is as if it never existed, certainly not to the extent of interfering with their property rights. On the question of what rights may be created, see *Johns* v. *James* (2). Sub-sec. 3 of sec. 192 is merely a machinery provision. The matter here involved is governed by sub-sec. 4A. The word "property" in that sub-section should not be read in a restricted sense. "Assent" as required by sec. 192 (4A) and sec. 193 means "positive assent"; it is not sufficient merely to show non-dissent (*Whitmore* v. *Turquand* (3); *Garrard* v. *Lauderdale* (*Lord*) (4); *Re a Debtor* (5)).

Taylor, in reply. The "property" referred to in sec. 192 (1) (*a*) is the whole of the debtor's property (*Re Sloan and Maxwell* (6)). It is obvious that the word "property" as used in sub-sec. 4A of that section was not intended to have the same meaning; the mere communication of a deed to a creditor is sufficient (*Adnitt* v. *Hands* (7); *Johns* v. *James* (8)). The manner in which proof might be given is shown in *Re Jeffrey's Deed of Arrangement* (9).

Cur. adv. vult.

(1) (1915) 2 K.B. 654.
(2) (1878) 8 Ch. D., at p. 750.
(3) (1861) 3 De G.F. & J. 107, at p. 109 [45 E.R. 819, at p. 820].
(4) (1830) 3 Sim., at p. 12 [57 E.R., at p. 905].
(5) (1939) 2 All E.R. 338, at p. 342.
(6) (1931) 3 A.B.C. 273.
(7) (1887) 57 L.T. 370.
(8) (1878) 8 Ch. D., at pp. 745, 746.
(9) (1933) 5 A.B.C. 189.

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The following written judgments were delivered :—

RICH AND DIXON JJ. This appeal is brought by special leave from a decision of the Supreme Court of New South Wales (*Jordan* C.J. and *Halse Rogers* J., *Davidson* J. dissenting) dismissing an appeal from an order made by a District Court upon a bailiff's interpleader. The order thus affirmed barred the claim to the goods taken in execution under the judgment of the District Court. The claimant, who is the appellant, is a trustee under a deed of arrangement made by the execution debtor in favour of his creditors.

The deed, which was an assignment of the debtor's property, was executed by him on 12th July 1939. On 15th July the execution creditor delivered the writ of execution to the bailiff, and, at some time not exactly stated, the seizure was made. The date of seizure is not important because, under sec. 29 of the *Sale of Goods Act* 1923 (N.S.W.), the goods of the debtor were bound from the delivery of the writ to the bailiff. The question is whether, at the date when it was so delivered, that is, on 15th July, the goods seized had ceased to be the property of the execution debtor and had passed to his trustee under the deed of assignment executed three days earlier.

The instrument was not registered as a deed of arrangement under Part XII. of the *Bankruptcy Act* 1924-1933 until 31st July. Within the twenty-eight days allowed by sec. 193 (1) (*b*) of that Act the deed received the assent of the majority in number and value of the creditors of the debtor. As from that time there can be no doubt that the property of the debtor was completely vested in the claimant as trustee. But the execution creditor maintains that the trustee had obtained no title, or at all events no title in equity as well as at law, to the debtor's property when on 15th July he delivered his writ of execution to the sheriff and consequently that his rights as execution creditor in respect of the goods seized intervened.

The first ground relied upon in support of the contention is that, under sec. 193 of the *Bankruptcy Act*, a deed of arrangement has no validity unless and until the requirements of that section are fulfilled by the registration of the deed and by the assent of a majority in number and value of the creditors given in accordance with sec. 195 (2). The decision of the Supreme Court rests upon this view

of the statutory provisions. *Jordan* C.J., in whose judgment *Halse Rogers* J. concurred, construed the Act as meaning that a deed of arrangement should not become operative until sec. 193 had been complied with. *Davidson* J. adopted the contrary interpretation of the provisions, which he regarded as allowing validity to a deed of arrangement until the times limited by sec. 193 (1) (*a*) and (*b*) respectively expired and then avoiding the deed for non-compliance. We are of the opinion that this construction of the statute is correct and that, until there has been a failure to register a deed of arrangement within the time fixed by par. *a* or to obtain the assent of a majority of creditors within the time fixed by par. *b* of sec. 193 (1), its operation is not affected by sec. 193.

The section says that a deed of arrangement shall be void unless it is registered within twenty-eight days and before, or within twenty-eight days after, its registration it receives the required assent of creditors. The prima-facie meaning of this language is that invalidity shall ensue from non-compliance, not that before compliance there shall be no validity; that is to say, "unless" is equivalent to "if not." Expressions occur in sec. 198 (1) and sec. 221 (*a*) which are consistent only with the supposition that a deed possesses validity until there is a default in compliance with sec. 193 (1). Sub-sec. 1 of sec. 198 uses the expression "unless the deed becomes void," and sub-sec. 2 "where such a deed of arrangement has become void by virtue of this Part." Sec. 221 (*a*) is even more definite. It penalizes a trustee if he "acts under a deed of arrangement after it has to his knowledge become void by reason of non-compliance with any of the requirements of this Act."

It is true that sec. 192 (3) contains some introductory words which appear to point in a contrary direction. It says: "Notwithstanding anything contained in the next succeeding section, the court may, after the execution of such a deed, on the application of the trustee (if any) or of any creditor who has assented to the deed, subject to such conditions (if any) as the court thinks fit to impose, order a stay of proceedings in any action, execution, distress for rent or other legal process, in respect of any debt or liability which would be provable in the bankruptcy if a sequestration order were made against the debtor, and may at any time in its discretion

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set aside the order." But the "notwithstanding" clause does not necessarily imply more than that the possibility of a deed becoming invalid is not to be an objection to the existence of a power of staying an action, execution, distress or other legal process pending registration.

The chief argument against the view we have adopted is to be found in sub-sec. 4A of sec. 192, a sub-section introduced by the amending Act of 1932 (No. 31 of 1932, sec. 57). Read independently of the sub-sections after which it is inserted and of an analogous provision dealing with compositions inserted at the same time in sec. 159, sub-sec. 4A may be understood as containing a declaration of general application to the effect that on registration of a deed of arrangement all the property of the debtor shall vest in the trustee. *Jordan* C.J. placed this interpretation on it. The sub-section is obscurely drawn, but we think its meaning is quite different. Context and subject matter show, in our opinion, that the provision is intended to deal only with property that has been taken in execution under process which has been stayed under sub-sec. 3 of sec. 192.

After sub-sec. 3, which has already been set out, stands sub-sec. 4, which is expressed as follows: "(4) The order while in force shall have the effect of staying the proceedings pending the registration of the deed and its receiving the assent of the requisite majority in number and value of the creditors within the prescribed time."

When the preliminary steps for a composition have been taken, the court is empowered by sub-sec. 1 of sec. 159 to stay the proceedings in any action, execution, writ of fi. fa. affecting land, distress for rent or other legal process in respect of debts provable. Sub-sec. 2 then goes on to provide that the order while in force shall have the effect of staying the proceedings until after the meeting of creditors and then, if a composition or scheme of arrangement is there resolved upon, until it becomes binding on the creditors or fails to obtain confirmation or is rejected by the court or, if an assignment is decided on, for a further fourteen days.

Thus sec. 192 (3) and (4) and sec. 159 (1) and (2) contain parallel or analogous provisions for the two cases of a deed of arrangement and of a composition or scheme of arrangement. To these respective provisions the amending Act No. 31 of 1932 added in each case

a further sub-section. To sec. 159, sec. 44 of that Act added sub-sec. 2A, which is as follows : " (2A) The costs of any execution up to the date of the order staying proceedings in the execution and the taxed costs incurred by any creditor in the action or proceeding under which the execution issued or such costs as are fixed or allowed by the court before which the action or proceeding was tried or heard (not exceeding fifty pounds) shall be a first charge on the property and the trustee may sell the property or an adequate part thereof for the purpose of satisfying the charge."

Clumsily expressed as this provision is, the words " the property " appear plainly to mean the property seized in execution or otherwise made available by the execution towards satisfaction of the judgment debt, not the whole of the debtor's property.

To sec. 192 (3) and (4), sec. 57 of Act No. 31 of 1932 added sub-sec. 4A, the provision which formed the governing consideration in the decision of the majority of the Supreme Court. Sub-sec. 4A is expressed as follows :—" (4A) Upon the registration of the deed and upon its receiving assent as specified in the last preceding sub-section, the property shall, if the deed so provides and subject to the provisions of this Act, vest in the trustee : Provided that the costs of the execution up to the date of the order and the taxed costs incurred by any creditor in the action or proceeding under which the execution issued or such costs as are fixed or allowed by the court before which the action or proceeding was tried or heard (not exceeding fifty pounds) shall be a first charge on the property and the trustee may sell the property or an adequate part thereof for the purpose of satisfying the charge." In our opinion, " the property " referred to in this provision does not mean the whole of the debtor's property but is confined to property seized in execution or made applicable by means of the execution to the satisfaction of the claim of the judgment creditor. We think that this restriction on its meaning is required by the context, which establishes the subject matter to which it is directed, and by the terms and the purpose of the proviso.

As to context, sub-secs. 3 and 4 are dealing with the power to stay process and the effect of an order made in the exercise of the power. It is to be expected that sub-sec. 4A will pursue the same

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subject. We think that it does so and that the purpose of the first limb of sub-sec. 4A is to make it clear that the issue of execution and the seizure of property thereunder shall not prevent the full vesting of that property in the trustee, if the deed contains an assignment and is not merely a deed of inspectorship or letter of licence. The words " if the deed so provides " refer to the distinction between deeds of assignment which involve a vesting of property in the trustee and the class of deeds included in sec. 190 (3) (*c*) (*d*) and (*e*), which do no more than authorize a dealing with the debtor's property or affairs.

The proviso, like sub-sec. 2A of sec. 159, performs the office of giving an execution creditor whose process has been stayed a charge upon the property for his costs or some of them. It is impossible to suppose that he is to get a charge over property that was not affected by the execution and " the property " must, we think, mean the property which otherwise would, by reason of the execution, become applicable towards satisfaction of the judgment creditor's claim. It is cast in the form of a proviso because its operation is to qualify the vesting of the property seized and make that vesting subject to the charge. Although the combined operation of sub-secs. 3, 4 and 4A is not necessarily confined to cases of an execution levied before the deed of arrangement is made by the debtor, it was, we think, that contingency the draftsman of sub-sec. 4A had in mind and it determined the form in which he threw the provision.

We are, therefore, of opinion that sub-sec. 4A of sec. 192 does not require the conclusion that until registration a deed of arrangement has no effect.

It follows that sec. 193 should receive the construction which its language naturally bears and be understood as invalidating a deed only after a failure to fulfil its requirements has occurred.

The second ground on which the execution creditor in the present case contends that his execution takes priority and overrides the title of the claimant as trustee under the deed of arrangement is that on 15th July 1939, when he delivered the writ to the bailiff, the entire beneficial property in the property assigned had not passed from the debtor to the trustee. Until a deed of arrangement for

the benefit of creditors is assented to or acted upon by creditors, its presumptive operation is not as a trust conferring beneficial interests on the creditors but as a mandate to the trustee to hold the property on behalf of the debtor and apply it towards the satisfaction of his debts. The execution creditor says that at the time when the writ bound the goods of the debtor the deed had not been so assented to by creditors that the beneficial interest in the goods seized had passed from the debtor. Upon this question the unanimous opinion of the learned judges in the Supreme Court was against the execution creditor and we agree in this opinion.

Jordan C.J. stated the material facts as follows :—" The deed of assignment was executed by Willis on 12th July 1939 in the presence of one Gillies, manager of the Glen Innes branch of the Bank of New South Wales, which was a creditor for £1,573 5s. 6d., and of one Small, the representative of David Cohen & Co. Pty. Ltd., the second largest creditor, to which £1,449 2s. 1d. was owing. Small attested the signatures of the assignors and of the trustees. On 13th July the trustee communicated the deed to one Legge, a director of the Glen Innes Co-operative Dairy Society Ltd., a creditor for £254 18s. 4d., and on 14th July to F. H. Doyle, who was also a creditor." None of these creditors dissented. Assent is of course not the necessary consequence of failure to dissent. But the circumstances were such as to make it certain that these creditors intended to assent and were understood as doing so. On the view he took of sec. 193, it was unnecessary for the learned District-Court judge to express his opinion upon this question, and what inferences of fact should be drawn is a matter for him and not for us. But we think that in the present case the burden of proof lying upon the claimant was discharged when he proved that the deed had been communicated in the manner stated to creditors who had not dissented and that the onus then lay upon the execution creditor.

The facts being left standing thus, no other conclusion was open except that the creditors assented : See *De Barres* v. *Shey* (1).

The appeal should be allowed : the order of the Supreme Court discharged and in lieu thereof the decision of the District Court should be set aside and an order made allowing the appellant's

(1) (1873) 29 L.T. (N.S.) 592, at p. 595.

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claim to the goods seized, and directing that the moneys in the hands of the bailiff representing such goods should be paid over to the appellant as trustee of the deed of arrangement.

The respondent should pay the costs of the appeal to the Full Court and of the interpleader issue in the District Court. But pursuant to the appellant's undertaking embodied in the order granting special leave to appeal the appellant will pay the costs of the appeal.

McTIERNAN J. I agree.

The question is whether the appellant, who is the trustee under a deed of arrangement for the benefit of creditors, or the respondent, who is an execution creditor of the debtor by whom the deed was executed, is entitled to the proceeds of the sale of certain goods which the deed purported to assign to the appellant. The goods were taken in execution under process issued out of a District Court at the instance of the respondent and sold by the bailiff, who interpleaded when both parties claimed the proceeds of sale.

If the debtor's property passed to the appellant under the deed of arrangement before 15th July, the appellant is entitled to the proceeds. But if the property did not pass to the appellant before that date, the goods taken in execution would have been bound by the writ of execution as from 15th July, the date upon which it was delivered to the bailiff for execution.

The assignment of the debtor's property was a deed of arrangement and was subject to Part XII. of the *Bankruptcy Act* 1924-1933. It was executed on 12th July 1939 and was registered under the Act on 31st July 1939. The deed was expressed to have an immediate operation as an assignment of the debtor's goods. But the respondent contends that it was ineffectual to pass the property in the goods to the appellant before 15th July and that they then became bound by the writ of execution.

The respondent's first contention, which is based on sec. 193 (1), is that the deed of assignment was wholly void during the time it was unregistered. This sub-section says that a deed of arrangement to which Part XII. applies " shall be void unless " it is registered and assented to in the manner and within the times prescribed by the sub-section. In my opinion, this contention is not supported

by the sub-section. Its meaning is that if the deed is not registered within the prescribed period it will become void at the end of the period. The sub-section does not mean that the deed is void from the time it is executed until it is registered and that it can only become a valid instrument when the requirements of the sub-section are satisfied. This construction of the sub-section is supported by forms of expression employed in secs. 193 and 221.

The respondent's second contention is based on sec. 192 (4A). It is in substance that this sub-section enacts that the registration of the deed is necessary to vest in the trustee any property of the debtor comprised within the deed. In my opinion, the sub-section has no such general application to the property comprised in the deed. The sub-section was inserted into an existing set of provisions constituting a scheme for the staying of proceedings against a debtor who had executed a deed of arrangement. The word "property" in sub-sec. 4A refers, in my opinion, to such property of the debtor as may be bound by any of the proceedings mentioned in sub-section 3. The object of the new sub-sec. 4A is to vest such property (if the deed provides) in the trustee by the act of registering the deed; the debtor himself could not assign it absolutely to the trustee if it were bound by the proceedings. The creditor is compensated by the proviso for the loss of his rights.

As the time for complying with sub-sec. 193 (1) had not elapsed, it follows that, if there had been an assent at common law to the deed before 15th July 1939, the rights which the respondent derived from the delivery of the writ of execution to the bailiff were subject to the operation of the deed of arrangement. There is no finding that such assent was given or not. It is not for this court to make a finding of fact on this question. But the evidence of the circumstances of the communication of the deed to creditors is such that, in order to succeed on the ground that assent was expressly withheld or not given, the execution creditor should be able to point to a finding of fact in his favour on this question.

In my opinion, the debtor's property in the goods was effectually vested in the appellant before the respondent's writ was delivered to the bailiff on 15th July, and the appellant is, therefore, entitled to the proceeds of the sale of the goods.

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Appeal allowed. Order of the Supreme Court discharged. In lieu thereof set aside the decision or adjudication of the District Court upon the interpleader plaint and summons and allow the appellant's claim to the goods seized by the bailiff. Order that the moneys representing such goods be paid out to the claimant (the appellant) as trustee of the deed of arrangement. The respondent to pay the appellant's costs of the appeal to the Full Court and of the interpleader plaint and summons in the District Court. Pursuant to the appellant's undertaking embodied in the order granting special leave to appeal, the appellant to pay the costs of the appeal.

Solicitors for the appellant, *Manning, Riddle & Co.*

Solicitor for the respondent, *H. L. S. Havyatt*, Glen Innes, by *H. J. Bartier.*

J. B.