

Now, with reference to the trusts of this deed, the adjudicated cases in this state do not apply. It does not provide that the dividends which would otherwise belong to the creditors who should come in and release, shall, on their refusal, be paid back to the debtor, or enure to his benefit, but that such dividends shall be divided proportionably among the assenting creditors, and in this respect differs from the decided cases in this state. It might, therefore, be unsafe to say that the trusts of this assignment absolutely condemn it, and I apprehend it would be irregular to pronounce judgment upon it in this case, and under the proceedings by which the question is presented.

The petition asking for the sequestration makes no mention of the deed, and, of course, does not assail it as fraudulent against creditors. It appears for the first time in the cause with the answer of Mr. Ward, who introduces it as evidence of his right to receive and disburse the money collected from the insurance companies, and as the foundation of his proceeding in the Superior Court. No issue has been made upon the deed; no opportunity given to the parties claiming under it to remove by proof, if they can, the objection that it is but a partial conveyance of the grantor's property. But this important question, involving matters of fact and of law, must be decided (if at all) upon the return of a writ of sequestration, thus making process issued in execution of the decree of this court the foundation of a totally new, and perhaps doubtful controversy. It appears to me it would be irregular and most inconvenient thus to engraft upon one cause a new litigation involving the rights of other parties, and presenting questions entirely distinct from those which arose in the first suit.

But apart from the question touching the validity of the conveyance, the trustee has interposed a motion to quash the writ of sequestration, upon the ground that he has not now, nor had he at the time it issued any property or effects in his hands which could be reached by it, and it is insisted by his counsel that the process of sequestration is inapplicable to such a case as this.

It was said by the late Chancellor in *Watkins vs. Dorsett*, 1