

debt due from the company to the landowner; they are merely part of the machinery provided by the Act for ascertaining the purchase money. . . . The plaintiff was not entitled to the money, either at law or in equity, except in executing or tendering a conveyance to the company."

As to classes (iii) and (iv)—"No distinction can be made between the issues of the writ and the obtaining of the judgment. . . . Even upon judgment, a good title having been shown, the purchase money did not become a debt payable to the plaintiff. It appears to me that, though in one sense there may have been an equitable debt due to the vendor, there was not such a debt as could be attached. The purchase money was not a debt actually 'due or accruing' within the meaning of the garnishee orders, for the right to it was conditional upon the execution or tender of a conveyance by the vendor. The provisions of O. 45, r. 8 (Ont. rule 376) as to payment or execution being a valid discharge to the garnishee are inapplicable to a conditional debt."

As to (v).—"With regard to the garnishee order obtained after that date (the date of the order on further consideration) it is clear from the authorities that it could not affect the fund that was already in court, even though there had been a conveyance; for the money being in court, was no longer 'in the hands' of the garnishee as required by rule 3." (Ont. rule 371.)

[NOTE.—*The Imp. and Ont. rules are identical. Chatterton v. Watney, L. R. 17 Ch. D. 259; 17 C. L. J. 322, is another recent decision under these rules.*]

HOLLOWAY V. CHESTON.

*Imp. Jud. Act, sec. 50; Ont. Jud. Act, 36—
Appeal from Judge's order in Chambers.*

Dec. 5. —L. R. 19 Ch. D. 516.

Defendants obtained, upon summons, a certain order from a Judge in Chambers. Plaintiffs thereupon served the defendants with a notice of motion for a certificate from his Lordship that he did not desire to have the summons reheard, so as to enable the plaintiffs to go direct to the Court of Appeal; or, in the alternative, that the order might be discharged.

CHITTY, J., said that he intended to follow the practice which had been adopted by the

Master of the Rolls, and always to adjourn summonses into Court for argument or judgment in cases in which an appeal was desired. Where there was no such adjournment the proper course was to move to set aside the order made in Chambers, so that the Judge might have the opportunity of delivering a judgment which would enable the Court of Appeal to understand the reasons for his decision.

[NOTE.—*The Imp. and Ont. sections appear to be virtually identical.*]

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

SUPREME COURT OF CANADA.

THE QUEEN V. DOUTRE.

Petition of Right Act—Counsel fees, Right of action for—Retaining services of an advocate P. Q. before Halifax Commission.

The suppliant, a barrister of the Province of Quebec, in this case, was retained by the Government of Canada in the British interest before the "Halifax Commission," which sat at Halifax, under the Treaty of Washington, 1877, to arbitrate upon the difference between Great Britain and the United States, in connection with inshore fisheries, etc. The suppliant, by his petition, alleged that he was retained by a letter from the Department of Justice at Ottawa, and there was contradictory evidence of an agreement entered into at Ottawa between the suppliant and the Minister of Marine and Fisheries as to the amount to be paid to the suppliant for his services. The Judge who tried the case found that the terms of the agreement were as follows: "That each of the counsel engaged would receive a refresher, equal to the first retainer of \$1000; that they could draw on a bank at Halifax, \$1000 a month while the sittings of the Commission lasted; that the expenses of the suppliant and his family would be paid, and that the final amount of fees or remuneration to be paid to counsel would remain unsettled until after the award of the Commissioners." The suppliant received \$8,000, and claimed an additional \$10,000 under his agreement. The award in favour of Canada was over \$5,000,000.