

DIARY FOR NOVEMBER.

1. Tues.....All Saints' Day.
2. Wed.....O'Connor, J., Q.B., died, 1887.
5. Sat.....Sir John Tolboarne, Lieut.-Governor of U.C., 1806. Gunpowder Plot.
6. Sun.....21st Sunday after Trinity.
8. Tues.....Court of Appeal sits. John Milton died, 1874.
9. Wed.....Prince of Wales born, 1841.
11. Fri.....Battle of Chrysler's Farm, 1818.
12. Sat.....J. H. Hagarty, 4th C.J. of C.P., 1868. W. B. Richards, 10th C.J. of Q.B., 1868. Magna Charta signed, 1215.
13. Sun.....22nd Sunday after Trinity. A. Wilson, 5th C.J. of C.P., 1878. J. H. Hagarty, 12th C.J. of Q.B., 1878.
14. Mon.....Falconbridge, J., Q.B.D., 1897.
15. Tues.....M. C. Cameron, J., Q.B., 1879.
19. Sat.....J. D. Armour, 14th C.J. of Q.B., 1887. Thos. Galt, C.J., C.P.D.
20. Sun.....23rd Sunday after Trinity.
21. Mon.....Michaelmas Term begins. Q.B. and C.P. Divisions of H.C.J. sittings begin. J. Ensley, 2nd C.J. of Q.B., 1796. Princess Royal born, 1840.
24. Thur.....Battle of Fort Duquesne, 1758.
25. Fri.....Marquis of Lorne, Gov.-Gen., 1878.
27. Sun.....1st Sunday in Advent. Frortenuac died at Quebec, 1808.
30. Wed.....St. Andrew's Day. Thos. Moss, C.J. of Appeal, 1877. Street, J., Q.B.D., and MacMahon, J., C.P.D., 1887.

Reports.

COUNTY COURT, COUNTY OF ONTARIO.

FLEMMING v. STEPHENSON and A. WARING,
ADMINISTRATORS OF F. WARING,
GARNISHEES.

*Motion for receiver—Attachment of legacies—
Rule 935.*

A legacy due to a judgment debtor and charged upon the testator's estate can be attached, under Rule 935, to answer a judgment against the legatee. *Leeming v. Woon*, 7 A.R. 42; *Stewart v. Grough*, 15 A.R. 299; *Trust & Loan Co. v. Gorsline*, 12 P.R. 654; and *Canadian Cotton Co. v. Parmelee*, 13 P.R. 20, 308, considered.

[WHITBY, Nov. 7, 1892.]

This was an application for a receiver, on behalf of a judgment creditor of one A. Waring, to collect a legacy in his favour, payable out of the testator's estate upon realization thereof by sale. The administrators, with the will annexed, had not realized at the date of the application. The notice of motion asked in the alternative for such other order as might be thought proper.

G. Y. Smith for the plaintiff.

Dow and McMillin for the administrators.

DARTNELL, J.J.: The questions to be considered are of some difficulty. If the application for a receiver, under the circumstances detailed, be one for equitable relief, then the

County Court has no jurisdiction, and the plaintiff would be compelled to bring an action in the High Court, praying for equitable execution. See *Whidden v. Jackson*, 18 A.R. 439; *Re McGugan v. McGugan*, 21 O.R. 289. I consider, with some diffidence, however, in the absence of direct authority, that this legacy can be attached under the provisions of Consolidated Rule 935.

The law on this point seems to be in a state of transition. In *Leeming v. Woon*, 7 A.R. 42, following *In re Cowans Estate*, 14 Ch.D. 638, it was held that, since the Judicature Act, no distinction would be made between legal and equitable debts with regard to garnishee process. But *Re Cowans Estate* having been overruled in England by *Webb v. Stenton*, 11 Q.B.D. 518, *Leeming v. Woon* was no longer of authority; and in *Stewart v. Grough*, 15 A.R. 299, it was held that there must be a debt due. In that case a receiver was appointed to receive a share of an estate to which the debtor was entitled. An attaching order had previously been made at the instance of another creditor. This order was held to be void, and, although the executors had paid the attaching order, they were ordered to pay the receiver. It is to be noted that this latter case was decided, and the order made therein, before the revision and consolidation of the Rules as at present in force.

In this consolidation, Rule 935 was amended so as to enable the court to attach "all" claims and demands of the judgment debtor against the garnishees arising out of trust or contract where such claims could be made available under equitable execution." This Rule, in its original form, is contained in Rule 370, O.J.A. of 1881.

Trust & Loan Co. v. Gorsline, 12 P.R. 654, decides that where a debt is attachable an order for a receiver would not be granted. Rule 935 was then in force. It was there contended that the money, if exigible at all, could be reached by garnishee process, and that therefore a motion for a receiver was not a proper proceeding.

There is no doubt that in this case the claim or demand of the debtor arises out of a trust, that is, the administrators hold the share in trust for him, and do now hold in trust for him such amount as will be coming to him after the estate accounts are taken and distribution effected.