

due from the Law Society to Rowsell & Hutchison, or to the assignee of their estate. When completed and the reports accepted, the Law Society would be obliged to pay the contract price. Clarkson sold the printing and work unfinished in one lot, and made no division as to what had been done by Rowsell & Hutchison before their assignment, and that done by Clarkson after the assignment to him, Clarkson informing the purchasers of the terms of the agreement entered into between himself and the editor. After becoming aware that Clarkson had sold and assigned to the Publishers' Syndicate and been paid by them for the whole amount of the work done, the Law Society corresponded with the Publishers' Syndicate, and, with full knowledge of the conditions under which the Syndicate were completing the contract, took the benefit of it. When the Syndicate purchased the work done by Rowsell & Hutchison, the amount thereof was a debt due to the estate, and when paid to the assignee the money became the property of the bank under the assignment to it, and was properly paid to the bank by the assignee. There can, therefore, be no set-off by the Law Society of its judgment recovered against Rowsell & Hutchison against such sum.

Judgment for plaintiff against the Law Society for \$346, with interest from 1st June, 1900, and costs on the High Court scale.

WINCHESTER, MASTER.

NOVEMBER 6TH, 1902.

CHAMBERS.

JOHNSTON v. RYCKMAN.

Discovery—Examination of Plaintiff—Default of Attendance—Motion to Dismiss Action—Proof of Default—Affidavit of Solicitor—Cross-examination—Ex Parte Certificate of Examiner—Locus Penitentis.

Motion by defendant Ryckman to dismiss action on the ground of non-attendance of plaintiff for examination for discovery.

C. W. Kerr, for applicant.

W. R. Smyth, for plaintiff.

THE MASTER.—In support of the application were read the subpoena and appointment for plaintiff's examination and affidavit of service thereof on plaintiff and admission of service of appointment by his solicitor; also a certificate of the special examiner as to what took place before him, and an affidavit of the applicant's solicitor. The plaintiff asked for