

RECENT ENGLISH PRACTICE CASES.

REPORTS

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BARBER V. BLAIBERG.

Imp. Jud. Act, 1873, sec. 24; O. 16. r. 17—Ont. Jud. Act., sec. 16, subs. 4, Rule No. 107—Counter-claim—“Connected with the original cause or matter.”

Where a grantee under a subsequent bill of sale is sued as in detinue by the grantee under a prior bill of sale, to recover goods of the grantor wrongfully seized, a counter-claim by him against the grantor, who has been made a party, for the money due to him under the bill of sale, is not a valid counter-claim under the above section and rule.

Feb. 15—L. R. 19 Ch. D. 473.

Action for detinue brought by the grantee, one Barber, under a prior bill of sale against the grantee, under a subsequent bill of sale, one Blaiberg, who had removed from the premises of the grantor, Bass, certain goods and chattels. Blaiberg put in a statement of defence and a counter-claim, and he made Bass a party, and he asked against Barber and Bass for a declaration that he was entitled to full relief under the bill of sale to him, and in the alternative he asked, as against Bass alone, that Bass might be ordered to pay to Blaiberg the amount still due under his bill of sale, with interest and costs.

It was contended that the counter-claim against Bass was informal and should be dismissed.

FRY, J.—This counter-claim has not been opened on any point except the liability of Bass to pay this amount, said to be due on the bill of sale. . . . The question, therefore, is whether the payment asked by Blaiberg from Bass is a matter “relating to or connected with the original cause or matter.” The original subject of this cause is Barber’s right to have the goods which Blaiberg has seized. The two matters are, in my judgment, totally distinct, and ought to be the subject of distinct litigation. Therefore, I think the objection taken to this part of the counter-claim is valid, and the other portion of the counter-claim having been abandoned, I dismiss the counter-claim with costs.

[NOTE.—The *Imp.* and *Ont.* sections and rules are identical respectively.]

HOWELL V. METROPOLITAN DISTRICT RAILWAY CO.

Imp. O. 4, 5, rr. 3, 8; Ont. rr. 371, 376—Garnishee order—“Debt due or accruing.”

A “debt due or accruing” to a judgment debtor, and therefore capable of being attached by a garnishee order under Rule 371, must be an absolute and not merely a conditional debt.

Nov. 9.—L. R. 19 Ch. D. 508.

Aug., 1878. Defendants served plaintiffs with notice to treat in respect to a house belonging to him, under the *Imp. Land Clauses Act*.

Nov. 27, 1878. Jury fixed compensation at £3,650, and on same day the sheriff gave judgment for that amount.

Jan. 25, 1879. The defendants delaying the completion of their purchase, the plaintiff brought this action for specific performance of the executory contract.

May 8, 1879. Plaintiff obtained judgment accordingly, subject to the usual enquiries as to title.

Jan. 7, 1880. The chief clerk certified to a good title, subject, *inter alia*, to certain garnishee orders *visà*, and that such good title was first shown on Dec. 4th, 1878.

Feb. 9, 1880. An order was made, on further consideration, directing a conveyance and payment by the defendants of their purchase money into court.

June 28, 1880. The plaintiff executed an assignment of the property to the company, who shortly after paid the purchase money into Court.

Of the garnishee orders—

(i) Some had been served after the verdict of the jury, but before good title shewn. (ii) Some had been served after good title shewn, but before writ issued. (iii) Some after writ issued, but before judgment. (iv) Some after judgment, but before the date of the certificate. (v) One after the date of the assignment and the payment of the purchase money into court.

Held, none of these garnishee orders affected the fund in court.

CHITTY, J., considering *seriatim* the various classes of garnishee orders, said:—

As to classes (i) and (ii)—“The sections of the *Lands Clauses Act*, under which the amount of purchase money and compensation is fixed by a jury and the judgment of the sheriff, do not have the affect of creating an absolute