of action-at-law by defendant in his own name and for his own use against the garnishee. . . . "A garnishee cannot be held liable, unless it can be shewn that he is indebted to the defendant at the time of the institution of the garnishment proceedings. The establishment of his liability afterwards is not enough."

A judgment on which proceedings are stayed for the purpose of appeal is not proof of a right of action.

The debt to be garnished must be due absolutely and beyond contingency. Such a debt may be evidenced by a final judgment; this judgment is not final.

I think the learned Master is right. The appeal will be dismissed with costs which I fix at $15 for the judgment debtor, and garnishee each. The costs of the judgment debtor may be set off against the judgment which judgment creditors hold. The costs of the garnishee must be paid to him by the judgment creditors of the defendant.

HON. MR. JUSTICE BRITTON. MARCH 26TH, 1913.

STANZEL v. CASE THRESHING MACHINE CO.

4 O. W. N. 1002.

Jury Notice—Striking out—Practice.

BRITTON, J., struck out a jury notice served by defendants, holding that the action being one involving complex questions of law and fact, should not be left to a jury.
Bisseth v. *Knights of the Maccabees*, 22 O. W. R. 89, followed.

Motion by plaintiffs for an order striking out the jury notice served herein.

Grayson Cmith, for the plaintiff.

J. D. Falconbridge, for the defendant.

HON. MR. JUSTICE BRITTON:—Upon reading the pleadings herein it appears perfectly plain that the issues tendered by the plaintiff—and by the defendants in their defence and counterclaim—are such as should be tried by a Judge and not by a jury. The action is a complicated one involving important questions of law and fact. It would be very inconvenient to say the least of it, to have the plaintiff's claim tried by a jury and the defendants' counterclaim tried by a Judge—and the counterclaim is one that in my opinion a Judge would not submit to a jury.