fie v. *Pearson*, 8 O. R. 745, and the recent decision of Mr. Justice Ferguson in *Stuart* v. *Gough*, 23 C. L. J.

Akers, for the execution creditors:—The Creditors' Relief Act specially provides that any one attaching a debt shall do so for the benefit of the creditors generally (s. 37, ss. 3). So long as the money is not actually paid over it must go to the sheriff, *Dawson* v. *Moffatt*, 9 O. R. 484. To hold otherwise is to defeat the intention of the Creditors' Relief Act.

Bowes, for the City of Toronto.

MACDOUGALL, Co. J.—This is an application to me to direct an issue to try the right to certain moneys in the hands of the City of Toronto, owing to the judgment debtor.

The facts are as follows:—The Traders' Bank recovered a judgment on the 10th day of January, 1888, and on the 14th day of January applied for an attaching order, which was duly served on the garnishees on the same day. On the 18th of January Chisholm & Co. recovered a judgment against the same defendant, and placed an execution in the sheriff's hands for the amount of the same. On the 19th of January the attaching order was made absolute by me; on the 20th of January the execution creditor served a notice upon the City of Toronto requiring it to pay any moneys in its hands belonging to the judgment debtor to the sheriff, to be distributed under the provisions of the Creditors' Relief Act. The attaching creditor having issued execution against the City under these proceedings on January 21st, the solicitor for the City now applies to me to direct an issue to settle the rights of the parties. It is contended on the part of the Traders' Bank, that as no money has been levied by the sheriff, the provisions of the Creditors' Relief Act do not apply, and that they had become entitled to the funds attached by them, so far as the judgment debtor is concerned, the moment the attaching order was served, and they urge that the reason time is allowed to elapse to enable the garnishees to appear in attachment proceedings, is only to enable them to show the state of accounts between themselves and the judgment debtor, to claim any privilege of set-off or other reduction, should the fact be that the debt due by them did not equal the claim of the judgment creditor. But if the fact was that an indebtedness to the judgment debtor existed, equal to or greater in amount than the attaching creditor's claim, then the service of the attaching order *nisi*, and not the making of the final order, settled the rights of all parties. In the present case the attaching order *nisi*, was served before any execution was in the sheriff's hands.

The case of *Low* v. *Blackmore*, L. R. 10, Q. B. 485, and *Ex parte Joselyne*, L. R. 8 Ch. D. 327, were cited to show that in England it has been held that the service of the attaching order *nisi*, bound the funds, and cut out even the trustees in bankruptcy, who became such under an order made subsequent to the date of such service. It was also referred to in *Macfie* v. *Pearson*, 8 O. R. 745, in our own courts, in which it was held that the provisions of the Absconding Debtor's Act, prevailed as against the Creditors' Relief Act, the proceedings under the first-mentioned Act being antecedent to executions coming into the sheriff's hands. Judge ROSE, in that case, held that the provisions of the Creditors' Relief Act did not apply until moneys had been levied under the writs in the sheriff's hands, or, in other words, the mere placing of a writ of execution in the sheriff's hands, of itself, did not cause the Creditors' Relief Act to operate.

I was also referred to a clause in the Creditors' Relief Act, being s. 37, ss. 3, of the new revision, which enacts "that a judgment creditor who attaches a debt shall be deemed to do so for the benefit of himself and all creditors." This provision can only apply, however, to cases within the provisions of the Creditors' Relief Act, or, in other words, when the Act, by the entry of the sheriff in his books, has been brought into operation.

I may refer to s. 45, ss. 1 and 2, of the English Bankruptcy Act of 1883, an Act passed since the decision in *Ex parte Joselyne*, which expressly provides for the case of creditors attaching before the issue of the order in bankruptcy, enacting, that until the attached money is actually paid over, the trustee can claim the same for the benefit of creditors.

I must hold, therefore, in view of the authority of the cases above cited, that the service of the attaching order upon the garnishees effectually secured the moneys to the amount of the attaching creditor's debt. The provisions of the Creditors' Relief Act do not apply, and therefore I can direct no issue. The motion will be dismissed, but as the point appears to be a new one, I will make no order as to costs.