It appeared, however, that on the 20th March, 1861, McCollum made an assignment of the judgment so recovered against him by the garnishees, to Alexander Gillespie and others, composing the firm of Gillespie, Moffatt & Co It was sworn that this assignment was absolute and *bonâ fide*, and made for a valuable consideration, being for an amount equal to the judgment. It was further sworn that Gillespie, Moffatt & Co. had a large judgment against the judgment debtors, and a *fi. fa.* against the goods of the judgment debtors in the hands of the sheriff of Kent.

On behalf of the judgment creditors, it was sworn that previous to August, 1860, Thomas McCollum was insolvent, and had made an assignment of all his effects for the benefit of certain creditors, which assignment was declared void: that Gillespie, Moffatt & Co. were well aware that McCollum was insolvent and unable to pay his debts in full: that he was insolvent when he made the assignment to them, which they well knew; that such assignment was made with intent to give Gillespie, Moffatt & Co. a preference over the above-named judgment creditors.

J Read shewed cause on behalf of the judgment creditors. He referred to *Wise* v. *Birkenshaw*, (29 L. J. Ex. 240:) *Wintle* v. *Williams*, (3 H & N. 288.)

DRAPER, C. J.—The order in question is not drawn up on the consent of Gillespie, Moffatt & Co., who are directed to be made plaintiffs in the feigned issue, and it is not urged on the argument of this rule that they did consent, though it appears the agent of their attorney was heard before McLean, J., when he granted the order.

It is plain the garnishees have no objection to pay the money to the judgment creditors. I rather conclude they are desirous that the money should be so disposed of. But it seems there is an execution at McCollum's suit in the hands of the sheriff against them, and the money will come into *his* hands, and he *primâ facie* should pay McCollum, and he has notice of the assignment by McCollum to Gillespie & Co., and also of the attaching order. But he was no party in applying for this interpleader order, nor is he in any way directly affected by its result. The order is not and does not profess to be made under the statute for affording relief to sheriffs in cases of conflicting claims to the property seized by them.

Neither will this order fall within the first section of the statute respecting interpleading, for that enables the court or a judge to make the interpleader order in case a defendant, after declaration and before plea, in any action of assumpsit, debt, detinue, or trover, applies in manner pointed out by the act.

No previous summons was issued, calling on any party to shew cause why such an order as that in question should not be granted. The order was drawn up on reading the summons of the 13th of April, 1861, but that summons only called upon the garnishees and Thomas McCollum, and the attorney of McCollum in the suit of McCollum against the garnishees, to shew cause why the garnishees should not pay to the judgment creditors the amount due from the garnishees, or either of them, to McCollum, or so much thereof as would be sufficient to satisfy the debt due to the judgment creditors. The only ground for the intervention of the agent of the attorney for Gillespie, Moffatt & Co., was to shew that they held an assignment of that judgment.

The Common Law Procedure Act authorises the court or a judge to call the garnishee before them to shew cause why he should not pay the judgment creditor the debt due to the judgment debtor. If he does not appear, or does not dispute the debt, or pay the money into court, execution may be issued against him. If he appears, and does not dispute his liability, the judgment creditor may be authorised to issue a writ against him. But the statute goes no further, and certainly makes no provision for the intervention of a third party, or for calling any other parties, except the judgment creditors, the judgment debtor, and the garnishees, before the court or a judge, or for making any rule or order to bind or otherwise affect the interests of any such other parties.

But the English courts have held that when the debt sought to be attached has been already assigned by the debtor, the 60th and 61st sections of their Common Law Procedure Act of 1854, do not apply. According to the judgment in the case of *Hirsch* v. *Coates*, (18 C. B. 757,) the only course was to try any question of the liability of the garnishee to pay the judgment creditor by writ, under the 64th section of the English act, of which sec. 291 of our Consol. Stats. U. C, ch. 22, is a copy.

The decision in *Hirsch* v. *Coates* has probably made the want of a power felt to deal with third parties having, or claiming to have, a right to a debt which the judgment creditor is desirous of obtaining an order upon a garnishee to pay. And an act has been passed, 23 & 24 Vic., ch. 126, by sec. 29 of which it is provided, that when it is suggested by the garnishee that the debt sought to be attached belongs to some third person, who has a lien or charge upon it, the judge may order such third person to appear before him, and state the nature and particulars of his claim upon such debt. I presume that under this and the former acts, the judge having heard the third party, as well as the garnishees and the original parties to the cause, will in his discretion grant or withhold an order on the garnishee to pay. But this act gives no power to direct a feigned issue between any of the parties.

We have not any act containing the provisions of the English statute just cited, and I have not been able to find any legal ground on which to support the order.

In my opinion the rule must be absolute, but without costs.

Per cur.—Rule absolute.

MONTHLY REPERTORY.

CHANCERY

V. C. S. DOUGLAS v. CULVERWELL. *Nov.* 4, 5, 6, *Dec.* 4.

Fraud and pressure—Surprise—Sale or mortgage—Undervalue.

Where a person in pecuniary difficulties executed a deed of sale on the assurance that, notwithstanding the form of the instrument, he might redeem at any time, and it appeared that he had been induced to execute the instrument hastily in favour of a perfect stranger, by a solicitor who acted for both parties, and that the consideration money was much less than the market value of the property, the Court set aside the transaction as an absolute sale.

L. J. HUGHES v. JONES. *Nov.* 9, 11, 12, 25.

Vendor and purchaser—Specific performance—Land subject to leases—Waiver—Compensation.

Where the particulars and conditions of sale purport to offer an estate in fee simple or possession, the existence of leases for lives over a part of the estate will entitle the purchaser either to rescind the contract or to compensation, according to circumstances.

A statement in the conditions of sale that the purchaser is to be let into the receipt of the "rents and profits" from a certain day, must be construed to mean ordinary rents and profits, and not rents reserved on leases for lives.

Though the conduct of a purchaser, after the discovery of circumstances entitling him to rescind a contract, may be such as to preclude him from so doing, it does not necessarily follow that he is not entitled to compensation.

It is the duty of a vendor to qualify upon the face of the particulars the interest they intend to sell, if they do not intend to sell an unqualified estate in fee.

V. C. K. HARLEY v. MOON. *Dec.* 13.

Will—Construction—Residue—Aliquot shares—Abatement.

A testatrix being entitled to an annuity represented by a principal sum, by voluntary settlement, vests £600, part thereof, in trustees upon trust to pay the income to herself for life, with a power of appointment to her by deed or will amongst her issue, children or grandchildren, and in default to pay £250, part thereof, to her daughter C; and £200, further part thereof, to her daughter E.; and £150, the residue thereof, to her granddaughter She then, by her will, directs and appoints, in pursuance of her power, that the trustees of the settlement shall convert the £600, and after paying debts, funeral and testamentary expenses, pay £75 to each of her daughters, and the residue of the