

SECOND DIVISIONAL COURT.

SEPTEMBER 28TH, 1917.

\*RAT PORTAGE LUMBER CO. v. HARTY.

*Attachment of Debts—Moneys to Credit of Judgment Debtor in Bank—Special Account—Rule 590—No Sum Due to Judgment Debtor at Date of Service of Attaching Order—Sums Subsequently Paid to Bank and Appropriated by Judgment Debtor.*

Appeal by the plaintiffs, judgment creditors of the defendant, from the order of MASTEN, J., in Chambers, dismissing an appeal by the plaintiffs from an order of the Local Judge at Port Arthur in Chambers, which dismissed, save as to a sum of \$13.60, an application by the appellants for an order that one of the garnishees, the Canadian Bank of Commerce, should pay over a larger sum alleged to be due by the bank to the defendant. The decision of MASTEN, J., is noted, 12 O.W.N. 211.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and ROSE, JJ.

R. T. Harding, for the appellants.

Frank Denton, K.C., and A. A. Macdonald, for the defendant, respondent.

ROSE, J., in a written judgment, said that the defendant, who was a customer of the bank, had contracts with the Canadian Northern Railway Company, by which he was to cut and deliver to that company, by the 15th May, 1916, certain specified piling for which he was to be paid a specified price per foot. On the 19th July, 1916, he assigned to the bank, by a written instrument, as security for all his existing or future indebtedness and liability to the bank, all the debts, accounts, and moneys, due or accruing due or that might at any time thereafter be due to him under those contracts, and also "all contracts, securities, bills, notes, and other documents" held by him "in respect of the said debts, accounts, moneys, or any part thereof." This assignment was sent by the bank to the railway company, and "accepted" by the treasurer of that company. On the 27th November, 1916, the defendant wrote to the bank asking them to deduct from the moneys they received from the railway company what was due to them for advances and to credit the remainder to the "James Harty special account." On the 14th December, 1916, the plaintiffs obtained an order attaching all debts owing or