

poration, [1900] 2 Q. B. 214; *Brown v. Moore*, 32 S. C. R. 93; *Continental Wall Paper Co. v. Louis Voight*, 212 U. S. 227.

In the result, the legal objection taken by the defendant is well-founded, and the action must be dismissed with costs.

MIDDLETON, J.

OCTOBER 8TH, 1910.

*MANUFACTURERS LUMBER CO. v. PIGEON.

Receiver — Equitable Execution — Money Payable to Judgment Debtor under Contract—Retention as Security for Repairs—Effect of Receiving Order—Form — Costs—9 Edw. VII. ch. 48, sec. 25 (O.)

Appeal by the plaintiffs, judgment creditors, from an order of the Local Judge at Stratford dismissing the appellants' motion for an order for the appointment of a receiver by way of equitable execution.

W. G. Owens, for the plaintiffs.

R. S. Robertson, for the defendant.

MIDDLETON, J.:—The fund sought to be made available by the judgment creditors is \$1,360 now held by the Corporation of the City of Stratford under the terms of a contract for the construction of paving. The money has been earned in the sense that the construction work is entirely completed, but under the terms of the contract, the contractor is bound, without further remuneration than the original contract price, to maintain the works in perfect repair for a specified time. In default of his making repairs in compliance with notice and demand, the city corporation may repair and charge the cost to the contractor, and may resort to a percentage of the contract price which is to be held by the city corporation during the term for which the contractor is bound to maintain.

It is admitted that this sum is not a *debitum in præsenti* which can be reached by the ordinary process of attachment. Garnishee process contemplates a sum certain which can be ordered to be paid either presently or at a future date. The amount to be paid in this case must remain uncertain until it is ascertained what sum, if any, the city corporation may be entitled to deduct from it under the terms of the contract.

* This case will be reported in the Ontario Law Reports.