

made to the suggested purchaser, the respondent is, in my opinion and as the trial Judge held, entitled to recover as upon a *quantum meruit*, and I see no reason for differing from the conclusion of my learned brother as to the amount to which the respondent is entitled.

I would dismiss the appeal with costs.

HON. MR. JUSTICE BRITTON.

MARCH 27TH, 1913.

CHAMBERS.

SCULLY v. MADIGAN.

4 O. W. N. 1003.

*Debtor and Creditor — Garnishee — Judgment — Recovered by Debtor Against Garnishee — Stay of Execution — No Debt Due in Præsent—Assignment of Judgment.*

MASTER-IN-CHAMBERS held, 24 O. W. N. 251, that where judgment has been recovered by a plaintiff in an action against the defendant, but the entry of judgment has been stayed, there is no debt due and owing from defendant to plaintiff which can be attached by a judgment debtor.

BRITTON, J., dismissed appeal from above judgment with costs.

Appeal by the judgment creditors from the order of the Master in Chambers, 24 O. W. R. 251; 4 O. W. N. 981, discharging the attaching order which had been made against the garnishee attaching an alleged debt due by him to the judgment debtor.

A. W. Ballantyne, for the appellant.

J. P. MacGregor, for the judgment debtor.

Cook (Ryckman & Co.), for the garnishee.

HON. MR. JUSTICE BRITTON:—This appeal cannot succeed. The so-called debt, said to be due by the garnishee to the judgment debtor, is only in reference to a judgment recovered which is not yet final—a judgment on which, prior to the attaching order, proceedings had been stayed, and the stay was on, when attaching order was made. This stay was in order to allow the garnishee to appeal against the judgment, and an appeal has since been launched. The judgment as it stood on the date of the order was no more than the verdict of a jury—it may stand, it may not.

The rule is in my opinion correctly laid down in Cyc. vol. 20, p. 983: "In order that a creditor may maintain garnishment proceedings there must be a subsisting right