

DIARY FOR FEBRUARY.

1. Wed.... Sir Edw. Coke, born 1552. C. C. non-jury sittings in York. Barristers' Examination.
5. Sun.... *Sezagesima Sunday*. W. H. Draper, and C. J. of C. P., 1846.
6. Mon.... L. S. Hilary Term begins, H. C. J. sit. begin.
7. Tues.... Maritime Court sits.
10. Fri.... Canada ceded to G. B., 1763. Union of Upper and Lower Canada, 1841.
11. Sat.... T. Robertson appointed to Chy. Div., 1827.
12. Sun.... *Quinquagesima Sunday*.
13. Wed.... Ash Wednesday.
14. Thur.... Chy. Div. H. C. J. sit. end.
15. Sat.... L. S. Hilary Term ends. H. C. J. sit. end.
16. Sun.... *Quadragesima Sunday*. 1st Sunday in Lent.
17. Tues.... Supreme Court of Canada sittings begin.
24. Fri.... St. Matthias.
25. Sun.... 2nd Sunday in Lent.

Reports.

COUNTY COURT OF THE COUNTY OF YORK.

[Reported for the CANADA LAW JOURNAL.]

TRADERS' BANK v. MCCONNELL & CO.
CITY OF TORONTO, GARNISHEE.*Creditors' Relief Act—Attachment before any writ in sheriff's hands.*

Where a judgment creditor obtained an attaching order in certain garnishee proceedings and duly served the same, and, before the return of the garnishee summons and the making of the final order for payment over, certain other judgment creditors placed writs in the sheriff's hands, who, however, had not levied thereunder until after the final order for payment over was made,

Held, on motion by the garnishee for an interpleader, that the attaching creditor was entitled to payment over by the garnishee of the money, and that the case did not come within the provisions of the Creditors' Relief Act.

[MACDOUGALL, C. J.—February 3, 1888.]

This was a motion made before the judge of the County Court of the County of York for an order in the nature of an interpleader order under the following circumstances:—On January 10th, the Traders' Bank recovered judgment against T. McConnell & Co. for \$251.50 debt and \$12.92 costs, and, having ascertained that the City of Toronto was indebted to the defendant on January 14th, the Traders' Bank obtained the usual attaching order and issued the same, and served it on that day on the City of Toronto. The garnishee summons contained in the order was made returnable

on January 19th. On January 18th certain judgment creditors placed an execution in the sheriff's hands against T. McConnell & Co. On January 19th the Traders' Bank obtained the usual order for payment over on return of the garnishee summons and duly served the same upon the City. On January 20th the execution creditors, who placed writs in the sheriff's hands against T. McConnell & Co. on the 18th as above mentioned, served a notice on the City of Toronto, requiring it to pay any moneys in its hands belonging to T. McConnell & Co. to the sheriff, to be distributed under the Creditors' Relief Act, and on the 21st day of January the City of Toronto served notice of this motion upon the Traders' Bank, and also upon the said execution creditors who had placed writs in the sheriff's hands. No writs were placed in the sheriff's hands against T. McConnell & Co. prior to January 18th, 1888. The motion came up for argument upon the 26th of January, 1888.

A. H. F. Lefray, for the Traders' Bank:—Our rights were fixed at the date of the issue and service of the attaching order. At that time no one had a *locus standi* under the Creditors' Relief Act as there were no writs in the sheriff's hands, much less had anything been levied by him under any writs. It is right on principle that a judgment creditor's rights should be fixed as of the date when he obtains an attaching order, because the only reason for not making an absolute order for payment over at once is that the garnishee may have some cause to show, and if in the event it turns out that the garnishee had no cause to show, the judgment creditor should not be prejudiced by a delay, which the event has proved to have not been required by the justice of the case. The authorities also bear out the proposition that the date of the attaching order is the date when the rights of the judgment creditor to the debt become fixed as against the judgment debtor and all claiming under the judgment debtor. *Tapp v. Jones*, L. R. 10 Q. B. 591; *Low v. Blackmore*, L. R. 10 Q. B. 485; *Ex parte Joselyne in re Watt* L. R. 8 Ch. D. 327, the last two of which were cases of a judgment creditor claiming against a trustee in bankruptcy, and very analogous to this case. The judgment creditors necessarily claim under the judgment debtor: *Martin v. Boulanger*, L. R. 8 App. Cas. 296. See also *Mac-*