taking the examination is a judicial act which the solicitor of the husband is disqualified from performing. The Statute, Con. Stat. U. C. ch. 85, which regulates this examination of a married woman contains no provision for any disqualification on the ground of interest, but it is said that the general rule of law that a man cannot act judicially in a matter in which he is interested must be taken to overrule the act, and that a solicitor of a party comes within it. So far as the party himself is concerned it is clear that this must be so, but his solicitor is in an entirely different position, and as I gather from the cases of *Bancks* v. *Ollerton*, 10 Exchq. 168; and *Re Ollerton*, 15 C. B. 796, it was considered by the Court of Common Pleas that a solicitor was competent under the English Act; and the rule of the Court of Common Pleas of Michaelmas Term, 4 Wm. IV., was passed for the purpose of disqualifying one of the commissioners, where both were solicitors for parties interested. The law of England does not recognize any incompetency in a judge on the ground of interest except that involved in the rule that no one shall be a judge in his own cause. If such a ground of objection to the solicitor of a party did exist it is manifest that the law to be consistent should also invalidate the judicial acts of persons between whom and a party there might be the relationship of blood, but no rule of the kind exists.

I think the decree should be affirmed with costs.

COMMON LAW CHAMBERS.

(Reported by HENRY O'BRIEN, ESQ., *Barrister-at-Law.)*

BROWN v. MCGUFFIN.

GREAT WESTERN RAILWAY CO. *Garnishees.*

Attachment of debts—Assignment—Notice.

The judgment debtor, through his sub-contractors, delivered to the garnishees certain railway ties, and gave the sub-contractors an order on the garnishees for all money coming to him therefor. Subsequently to this, but before the garnishees had any notice of the above order, they were served with the attaching order in this case.

Held, that the order in favor of the sub-contractors operated as an assignment of the fund to them, although there was no notice of it to the garnishees, they not having been led by the want of notice to alter their position so as to make it inequitable as against them to enforce the assignment.

[Chambers, April 23, 1870—*Mr. Dalton.*]

This was an application to attach a debt alleged to be due from the garnishees to the judgment debtor.

The facts were, that the judgment debtor delivered to the garnishees 1326 railway ties, through his sub-contractors, Ford and Baker, at one of the stations of the company, under a contract by him to supply the company with a much greater quantity at 25c. per tie.

The garnishees acknowledged to owe the judgment debtor $331.50 for these ties, less a drawback of ten per cent., which it was agreed should abide the fulfilment of the contract; but as the judgment debtor desired to be released by the garnishees from further performance of his contract, they were willing to pay also the ten per cent. upon receiving proper releases in that behalf from the judgment debtor. The amount less the drawback was $289.35.

The judgment debtor denied that he owed the garnishees anything, and said the ties had never been delivered, but were still the property of Ford and Baker, the sub-contractors who delivered the ties at the station. He annexed to his affidavit a copy of the agreement between himself and Ford and Baker, in which the latter stipulated that the ties to be delivered by them, should not be in the possession of the judgment debtor until the payments were made as thereinbefore mentioned, that is, payment at 23 cents per tie for all ties delivered, less a drawback of ten per cent.; and he further swore that an order on the company was given by him to Ford and Baker, or rather to Wm. McCosh their attorney, entitling him to receive for them all moneys they should be entitled to for ties delivered. This order, he swore, was intended to have been given at the execution of the sub-contract, but was not in fact given till the month of February following.

Ford and Baker in their affidavit vehemently insisted that they had not delivered the ties, and that the act of the company in inspecting them, and crediting the judgment debtor with the price, was entirely unauthorized by them.

MR. DALTON—It is plain that the garnishees had no notice, previous to the attaching order, either of the above clause in the agreement between the judgment debtor and Ford and Baker, or of the order in favour of McCosh.

I take it to be clear law, that an attaching order has no operation upon debts of which the judgment debtor has already divested himself by assignment; he must have both the legal and beneficial title.

Two questions present themselves here.

First—Under the circumstances, can Ford and Baker insist that there has been no delivery? They did not before the attaching order inform the company of their position; and they delivered the ties upon the grounds of the company, apparently in performance of the contract of the judgment debtor. Had the company altered their position, as by payment to the judgment debtor, Ford and Baker would have had no remedy.

Several considerations on either side present themselves, and upon the whole, if I were driven to decide upon this point, I should think that Ford and Baker might still assert that the property had not passed from them. But I omit many observations which arise, as I think there is another ground upon which I may more satisfactorily decide the case.

Secondly—Can Ford and Baker assert, or can the judgment debtor assert for them, that the order upon the company is an equitable assignment of the fund in their favour, sufficient to defeat the claim of the judgment creditors? I think that they can. In Story's Equity Jurisprudence, secs. 1043-4, 1047, 1047 *a*, it is said that any order, writing, or act, which makes an appropriation of a fund, amounts to an equitable assignment of that fund, and that may be by parol as well as by deed. "But," as is said in sec 1047, "in order to perfect his title against the debtor, it is indispensable that the assignee should immediately give notice of the assignment to the debtor, *for otherwise a priority of right may be obtained by a subsequent assignee*, or the debt may be discharged by a payment to the assignor before such notice."

Very recent cases, however, show contrary to