

BRITTON, J.—The question of debt or no debt was one for the determination of the Judge in the inferior Court. The money in the hands of the garnishee is a surplus which, by the terms of the chattel mortgage, is to be paid to defendant, and is money for which, if not paid over, defendant could maintain an action. No doubt, plaintiff would be responsible to defendant for this surplus, as the garnishee was plaintiff's bailiff; but even so, it is the money of defendant and can be attached. *Evans v. Wright*, 2 H. & N. 527, distinguished. *Davenport v. McChesney*, 86 N. Y. App. 242, referred to. As the garnishee has not paid over the money to plaintiff (for payment to defendant), and as defendant has taken no steps against either plaintiff or garnishee for an account, defendant could have an action against the garnishee, and if so, the claim is a debt and can be attached under sec. 179 of the Division Courts Act. See cases cited in *Bicknell & Seager*, 2nd ed., pp. 321, 322.

Motion refused with costs.

NOVEMBER 6TH, 1903.

DIVISIONAL COURT.

OTTAWA ELECTRIC CO. v. BIRKS.

*Contract—Supply of Electrical Energy—Implied Contract to Take whole Supply—Breach—Construction.*

Appeal by defendants from judgment of County Court of Carleton in favour of plaintiffs and cross-appeal by plaintiffs to increase the damages awarded. Action to recover damages for an alleged breach by the defendants of a contract between the parties of 22nd May, 1901, for the supply by plaintiffs of electrical energy to the premises in Ottawa in which defendants carried on their business. The agreement provided that it should remain in force for one year, and thereafter from year to year until terminated by either party giving to the other ten days' notice in writing previous to the expiration of the then current year. The breach alleged was that the defendants, on 6th September, 1902, and while the contract was subsisting, cut the connection between the electric wiring of their premises and the line of the plaintiffs by which the electric energy was supplied, and thereby prevented the plaintiffs thereafter supplying electrical energy to the premises, and refused to accept electrical energy from plaintiffs, and had since taken it from another company.

Glyn Osler, Ottawa, for defendants.

G. F. Henderson, Ottawa, for plaintiffs.