

SCULLY v. MADIGAN—BRITTON, J., IN CHAMBERS—MARCH 27.

Attachment of Debts—Judgment Debt—Entry of Judgment Stayed—Discharge of Attaching Order.]—Appeal by the judgment creditor from the order of the Master in Chambers, ante 981, discharging the attaching order which had been made against the garnishee attaching an alleged debt due by him to the judgment debtor. BRITTON, J., said that the appeal could not succeed. The so-called debt, said to be due by the garnishee to the judgment debtor, was only in reference to a judgment recovered, which was not yet final—a judgment on which, prior to the attaching order, proceedings had been stayed, and the stay was on when the attaching order was made. This stay was in order to allow the garnishee to appeal against the judgment; and an appeal had since been launched. The judgment, as it stood on the date of the order, was no more than the verdict of a jury—it might stand, it might not. The rule is correctly laid down in 20 Cyc. 983: “In order that a creditor may maintain garnishment proceedings, there must be a subsisting right of action at law by the defendant in his own name and for his own use against the garnishee. . . . A garnishee cannot be held liable unless it can be shewn that he is indebted to the defendant at the time of the institution of the garnishment proceedings. The establishment of his liability afterwards is not enough.” A judgment on which proceedings are stayed for the purpose of appeal is not proof of a right of action. The debt to be garnished must be due absolutely and beyond contingency. Such a debt may be evidenced by a final judgment; this judgment was not final. Appeal dismissed with costs, fixed at \$15 for the judgment debtor and garnishee each. The costs of the judgment debtor to be set off against the judgment which the judgment creditor holds. The costs of the garnishee to be paid to him by the judgment creditor.

CANADA CO. v. GOLDTHORPE—CLUTE, J.—MARCH 29.

Landlord and Tenant—Lease—Right of Lessee to Purchase Demised Lands—Forfeiture by Non-payment of Rent—Recovery of Amount of Rent.]—Motion by the plaintiffs for judgment on the statement of claim, upon noted default of defence, in an action for a declaration that the defendants had forfeited the right to purchase the lands demised by a certain indenture of lease, and to recover the amount of rent due under the lease,