

CORRESPONDENCE.

satisfaction, is that which will help the creditors to collect their debts, and not that which under shelter of a sort of ratiocination that would do credit to the days of special demurrers, will result in giving the dishonest debtor reason to laud the law as his special aider and abettor in his dishonest withholding of his creditor's due. In the note to Sinclair's Division Courts Acts, s. 124, it is stated that "money paid into court cannot be garnished," and the following cases are quoted in support of that proposition *Jones v. Brown*, 29 L. T. Rep. 79, *French v. Lewis*, 16 U.C.Q.B. 547. A reference to these cases will show them to be not the slightest authority for such a proposition stated so broadly. It may perhaps turn out to be good law, but the cases quoted are certainly no authority. There is clear authority for garnishing money in the hands of a bailiff see *Lockart v. Gray*, 2 L.J.N.S. 163, and why money in a bailiff's hands can be attached, and in a clerk's hands cannot, is, I submit, not very intelligible. If it were not for a late English authority (*Dolphin v. Layton*, L. R. C. P. Div. 4, page 130), I would think that the question is hardly on principle debatable. This decision, by Chief Justices Coleridge, on appeal from an English County Court, states that "Proceeds of a Judgment paid into the Court are not attachable by means of a garnishee summons at suit of a third person as a 'debt' due from the Registrar of the Court to a judgment debtor." If this is to be held good law in this country, then it must settle the question that such moneys cannot be garnished. I find that the English County Courts are in most respects indetical with the Canadian Division Courts, and I find that the Registrar of the English County Court has imposed upon him the same statutory duty as the clerk of the Canadian Division Court—I mean that of paying money over to the owner of it on demand. At first sight one would suppose that this decision would at once settle the vexed question, but I submit it only puts an obstacle in the way of its settlement.

On looking into the report of the case, we find a well reasoned logical judgment of

the English County Court Judge finding in favour of the garnishee on the ground that the relation of the Registrar to the owner of the money is merely that of banker and customer, or that of debtor and creditor.

The primary debtor then appeals to the Queen's Bench, and we find neither the garnisher nor garnishee represented in the argument. Lord Coleridge stops the counsel for the primary debtor in his *ex parte* argument and says "I am clearly of opinion that money in the hands of the Registrar as an officer of the County Court is not subject to process of attachment," and Denman J. follows—"I am of the same opinion, I see no distinction in this respect between the Registrar of the County Court and the Master of one of the Superior Courts." Now this decision may perhaps for some occult reason be good law, but I must demur to the *ratio decidendi*. If it means anything, it means by parity of reasoning that Mr. Dalton, the Master of the Court of Queen's Bench, bears the same relation to money paid into his Court, as Mr. Howard, the clerk of one of the City Division Courts, bears to money paid into his Court. If this is so, it is somewhat startling. Mr. Dalton has no authority to pay money over to the client on demand, he has no such statutory duty imposed upon him—in other words, he owes nothing to the client. He is, as I understand, the personification of the Court for certain definite purposes; if a client wants money paid out to him, he must get a judge's order countersigned by the Master, upon production of which the Court or the Court's Bank pays over the money. The Master has no control over that money. The clerk of the Division Court is in a different position; so soon as the money is paid into his hands, he becomes *dominus pecuniæ* he owes the client; no judge's order, nor other proceeding to create a debt is necessary.

The Division Court is by statute a Court of Equity. A reference to the principles and practice of attaching money paid into the Court of Chancery is useful to assist in interpreting the equitable functions of the Division Court. It has been decided in *Wilson v. McCarthy*, 7 P. R. 132, that