

## RECENT ENGLISH PRACTICE CASES.

## REPORTS.

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Collected and prepared from the various Law Reports by A.  
H. F. LEPROV, Esq.\*)

## CHATTERTON V. WATNEY.

*Imp. O.* 45, rr. 3, 4, 8.—*Ont. O.* 41, rr. 6, 7, 11.

A garnishee order under the above general orders binds the debt attached, but does not amount to a transfer of them with securities.

[March 30, L. R. 17 C. D. 259.]

M. mortgaged leasehold to W. and then to B. A., judgment creditor of B., obtained a garnishee order against M. After this W. sold the property under a power of sale, and an action was brought to distribute the surplus proceeds.

*Held*, by the Court of Appeal (affirming a decision of Bacon, V. C., 16 Ch. Div. 378,) that the judgment creditor had no claim against the surplus proceeds of sale, for that a garnishee order has not the effect of transferring the debt due from the garnishee with the benefit of the securities for it, and that to treat the garnishee order as affecting the land before execution would conflict with the provisions of *Imp. O.* 27 and 28 Vict. c. 112, (which statute enacts that no judgment shall affect any land until delivered in execution.)

JESSEL, M. R.—“The case turns firstly on order 45 of the rules embodied in the Judicature Act 1875. Rule 3 of that order provides that, ‘service of an order that debts due or accruing to the judgment debtor shall be attached or notice thereof to the garnishee in such manner as the Court or Judge shall direct, shall bind such debts in his hands.’ The 4th Rule empowers the Court, where the garnishee does not dispute the debt due from him, or does not appear, to issue execution to levy the amount due from the garnishee. The effect is to declare the debt bound and to make the garnishee

liable to execution. . . . The appellant contends that a garnishee order is a sort of transfer of the debt and the security for it. That would defeat the provision in the 27-28 Vict. c. 112, by making the order affect land without any delivery in execution. This Act was passed for the purpose of facilitating the sale of land and not for the benefit of creditors. B. had an interest in the land, and equitable execution could have been obtained against him but this has not been done. Though the appellant as between him and B. is entitled to have the debt paid to him, he has no interest in the mortgaged premises. He has no title, and the appeal must be dismissed.”

BRETT, L. J.—“I am of the same opinion. The argument of the appellant went on the ground that by the garnishee order the debt is transferred, and he referred to the language of James, L. J., in *Ex parte Joselyne*, 8 Ch. D. 327, as supporting this view. But the Judicature Act contains no words importing a transfer of the debt, and I think that the L. Justice when he said that the property in the debt was transferred was only using a colloquial expression which meant nothing more than that the debt was bound. I am of opinion that the appellant's case fails.”

COTTON, L. J.—“I am of the same opinion, and should be content to rest the case on order 45 alone. If that gives the judgment creditor no interest in the land, it is unnecessary to consider the other Act of Parliament referred to by the M. R. though that Act strongly supports the conclusion at which we have arrived. . . . There is nothing in the terms of the general order to affect any security for the debt, it only takes away the right of the judgment debtor to receive the money and gives the judgment creditor a right to receive it. It has not the effect of transferring the security, nor does it give the person who obtained the garnishee order any right to the security or any claim against the land comprised in it.”

JESSEL, M. R.—“I quite agree with the view of Cotton, L. J., that a garnishee order does not operate as a transfer of the debt.”

[*Note*.—*Ont. O.* 41, rr. 6, 7, 11, are identical with *Imp. O.* 45, rr. 3, 4, 8, respectively.]

\* It is the purpose of the compiler of the above collection to give to the readers of this Journal a complete series of all the English practice cases which illustrate our present practice, reported subsequently to the annotated editions of the Ontario Judicature Act, that is to say since June, 1881.