the council and by individuals in opening the road established by the by-law.

As to the notice, it is sworn by many persons, and not denied by himself, that he knew well of the application, and was present in the council when the measure was discussed, and the by-law in progress, and that he was heard upon it. There is proof, moreover, that notice as required by law was given; and what is stronger than all against his application, that he was himself one of the applicants for the very line of road as it has been established, signed the petition for it, and pointed out to the surveyor the course which he desired it to take in passing through his land, which course the surveyor adopted. That also puts an end to all pretence of complaint on his part as to the road passing through his orchard or barn-yard, for though that could not be done against his will, it clearly could be done with his consent. It seems also that so far as the orchard is concerned, there was none there when the road was surveyed. It may be, as the complainant asserts, that he gave his consent as he did under the expectation that there would be a railway station fixed at a certain point, which the proposed road would have led to, and that this would have made it a very desirable road for him; but that this expectation has been disappointed, and the railway station placed elsewhere.

The council or the surveyor had nothing to do with his reasons for assenting; and if he has been disappointed in that respect, his case is not an uncommon one.

It cannot be said, after reading all the papers before us, that his consent was given upon any condition expressed by him. There are several circumstances in this case which would prevent our quashing this by-law upon a summary application, supposing our power to do so on any such ground as is assigned in this case to be without question, which we do not say it is. If no legal notice was given of the by-law, or if the road was laid out through the complainant's barn-yard or orchard contrary to his will, and if these facts, or either of them, make the by-law void, the complainant can urge that in his defence against the indictment for nuisance in stopping up this road, which it seems has been preferred against him.

We discharge the rule, with costs, to be paid by the applicant.

Rule discharged.

CHAMBERS.

(Reported by C. E. ENGLISH, Esq., Barrister-at-Law.)

COMMERCIAL BANK v. WILLIAMS.

Practice—Attachment of debts—Assignments.

A debt due to a judgment debtor who is dead cannot be attached without reviving the judgment against his personal representatives.

Qu.—Can a debt be attached in the hands of an assignee for the payment of debts, prior to a dividend having been declared by such assignee.

26th January, 1859.

English applied for the usual garnishee order in this case, against one John Young, on an affidavit of the plaintiff's attorney, first,—stating the recovering of the judgment, the amount due thereon and that the defendant had died while the writ of execution was in the sheriff's hands. 2nd, that he was told by the defendant in his lifetime, that he (the defendant) had a claim against the firm of Knight & Co., which firm sometime since made an assignment of their estate for the benefit of their creditors, to John Young, Esq., of Hamilton. 3rd, That he was informed that the said defendant came into the assignment as creditor for the sum of £164 18s. 5d., and that his dividend has not yet been declared, but Mr. Young expects when it is, the amount will be 12s. 6d. in the pound.

There was also evidence that the defendant had died intestate, and that no letters of administration had been taken out.

DRAPER, C. J. C. P.,—Refused the order on the ground that the defendant being dead, there were no parties to the suit as against whom this judgment could be attached, and doubted the practicability of attaching such a claim at all before the assignee had regularly declared a dividend, and referred to Bayard v. Simmons, 5 E. & B. 69; Jones v. Thompson, 4 Jur. p. 338; Power v. Butler, 4 Jur. p. 614.

Order refused.

COMMERCIAL BANK v. JARVIS ET AL.

Practice—Attachment of debts—Rent.

Rent to become due at a future time is not a debt due or accruing due within the meaning of sec. 194 C. L. P. Act, 1856, so that it can be attached to satisfy a judgment.

10th February, 1859.

The plaintiffs in this case applied for the usual order to attach debts due or accruing due from Messrs. Watson & Hestie to Jarvis one of the defendants, on an affidavit made by their attorney, stating that judgment had been recovered and was still unsatisfied; and that Messrs. Watson & Hestie were tenants of the said Jarvis of a store in the town of Stratford, at the annual rent of $600; that the rent had been paid up to the month of May next and no longer, and that after that time it would be payable to Jarvis as aforesaid.

DRAPER, C. J. C. P.,—Refused the order on the ground that no rent was shewn to be overdue, and that any future rent might never become due to Jarvis, and therefore was not a debt accruing due within the meaning of C. L. P. Act, 1856, sec. 194.

Order refused.

CHANCERY.

(Reported by THOMAS HODGINS, Esq., LL.B, Barrister-at-Law.)

MACDONALD v. MACDONALD.

Writ of Ne Exeat—Alimony—Plaintiff out of jurisdiction—Domicile.

The Writ of *Ne Exeat* granted after filing a bill in an alimony suit, remains in force after decree; and it is no objection that the wife resides out of the jurisdiction, as during coverture the domicile of the husband is the domicile of the wife.

29th January, 1859.

In this case the Bill was filed by a married woman for alimony. The parties were married in Nova Scotia in 1850—the defendant being then under age. Shortly afterwards he left her and went to Scotland, from whence he came to Upper Canada; and she removed to Lower Canada where she still resides. The Bill was filed in October, 1858, and a writ of *ne exeat* for £1000 bail obtained; and on the 21st December, 1858, a consent decree for permanent alimony was made.

Strong now moved to discharge the writ. The statute authorises the Court to exercise a discretion which before it could not: on filing a bill for alimony to issue a writ of *ne exeat*, until decree, and by the same Act the decree binds the same as a judgment. It was not the intention of the statute to continue the writ after the decree. On another ground, the writ should not continue, the Plaintiff resided without the jurisdiction of this Court, and should have applied to the Court within whose jurisdiction she resided, or where the marriage took place. Daniel's Ch. Pr. (last ed.) 1284. Smith's Ch. Pr 758; *Atkinson* v. *Leonard*, 3 Bro. C. C. 218; *Hyde* v. *Whitfield*, 19 Ves. 342; *Smith* v. *Nethersole*, 2 R. & Myl., 450.

Blake, contra. The original ground of the issue of the writ was that of custom, Beames on *Ne Exeat* 26. Here, however, there is no custom, but a discretion untrammelled by rules. The intention of the Legislature was to secure the defendant to the Province during the continuance of the alimony. In this case, the decree could not bind as the defendant had no real property. In *Hyde* v. *Whitfield*, both parties resided out of the jurisdiction, and the writ was refused on other grounds; and in *Smith* v. *Nethersole*, it was not stated that the Plaintiff lived out of the jurisdiction.—But this application was too late; from the analogy of Common Law, it should have been made on knowledge of the irregularity. Harrison's C. L. P. A. 49, 83 *et seq.* The decree is enrolled and was made by consent, and the cause is now out of Court.

THE CHANCELLOR delivered the judgment of the Court. This is an application for the discharge of a writ of *ne exeat*. Mr. *Strong's* objections are two-fold. 1. That the writ fell when the decree for permanent alimony was pronounced. 2. That it had issued irregularly owing to the Plaintiff residing without the jurisdiction.—I do not think there is any ground for the first objection. The object of the Act was to remedy disabilities under which married women labored, and was not intended only as a partial remedy. Under the large language of the Act, conveying so wide a discretion, we must suppose that the writ was intended to apply to cases of both interim and permanent alimony.