other moneys they have under control in the shape of rent and the proceeds of the old school house and site. By the figures submitted there is a considerable margin between the contemplated outlay as tendered for and the funds available under the contract or in the hands of defendants. It is not necessary to exceed what is thus provided, and defendants swear they will keep the work within what they have means to pay for. The Court should not lightly disturb the united action of the council and the school board in proceeding to establish a new school suitable for the needs of the municipality. The objection that there is not a good title to the new site should not prevail. There is power to expropriate, and, apart from that, the agreement for sale and possession has been made with the tenant for life, and that is one that controls the remainderman under the provisions of the School Act, sec. 39: Young v. Midland R. W. Co., 22 S. C. R. 190.

Injunction dissolved and costs reserved till the hearing or further order.

BRITTON, J. NOVEMBER 6TH, 1903

CHAMBERS.

RE TOMLINSON v. HUNTER.

Division Court—Jurisdiction — Attachment of Debts — Surplus in Hands of Bailiff of Chattel Mortgagee after Seizure and Sale—Attachment by Mortgagee—Prohibition.

Motion by defendant for prohibition to the 1st Division Court in the county of Carleton. Plaintiff held a chattel mortgage dated 6th January, 1903, for $1,105.31 made by defendant, payable on 31st March, 1903. Default was made in payment, and on 6th April plaintiff authorized one McDermott as bailiff to seize and sell the chattels covered by the mortgage. This was done, and enough was realized to satisfy the mortgage and all costs, and leave a surplus of $81.84 in the bailiff's hands. The plaintiff alleged that defendant was indebted to him for rent and upon other claims outside of the chattel mortgage, and on 30th April he began this action in the Division Court against defendant for the amount of the debt and against the bailiff as garnishee to get the $81.84.

W. H. Barry, Ottawa, for defendant, contended that this money in the hands of the garnishee, upon the undisputed facts, was not a debt, and so the Division Court had no jurisdiction to award it against the garnishee.

W. Wyld, Ottawa, and John Hodgins, Ottawa, for plaintiff.