

SELECTIONS.

Ordered that the paragraph respecting the Chancery Reports be referred back to the Reporting Committee, with instructions to consider and report what remedy should be applied to meet the difficulty stated.

Convocation adjourned.

SELECTIONS.

WHAT DEBTS CAN BE ATTACHED?

THE case of *Webb v. Stenton*, decided by the Court of Appeal, and reported in the September number of the LAW JOURNAL REPORTS, sets at rest one of those numerous doubts raised by the fusion of law and equity. It was a special case stated in reference to a garnishee order. The judgment debtor became, in August, 1882, entitled under a will to 85% a year for his life, payable by trustees in February and August out of the income of a trust fund. On November 11, 1882, a garnishee order *nisi* was made; but an issue was taken on the question whether at that date there was "a debt owing or accruing" from the trustees to the judgment debtor, and the special case was stated in order to decide this question. On the one hand, it was clear that on November 11 there was no sum actually due to the judgment debtor from the trustees; and, on the other, it was equally clear that, in the February following, some 42/10s. would be due from the trustees to the judgment debtor. Could this sum be said to be a "debt accruing" from them to him? The Divisional Court, composed of Mr. Justice Cave and Mr. Justice Day, decided that it could not; and the Court of Appeal has now affirmed that decision.

The process of attachment of debts was the invention of the Common Law Procedure Act, 1864, and in regard to the debts attachable the words used are the same now. Section 61 of the Common Law Procedure Act, 1854, applied the process to "debts owing and accruing" from the garnishee to the judgment debtor. The moribund Order XLV. used the same words, which re-appear in Order XLV. as it is to be in October 24. It may be as well to remark in passing that the new order, although it does not affect the character of debts which may be attached, makes an important extension of the process by allowing it to be employed, not only by a judgment creditor, but by a person who has

obtained an order for the payment of money. The reason for the addition is probably to be found in the rules themselves, which not unfrequently allow orders to be substituted for the more formal process of judgments. The addition may be justified without much difficulty. No doubt a judgment has a deliberation about it not possessed by an order, but it is not to be assumed that an order is likely to be less just, especially when appeals are so freely given; and if a person is adjudged entitled to have money from another, he ought to be allowed to call on the debtors of that other to hand over their debts to him, whether his title depends on an order no less than when it depends on a judgment. With regard to the words "debts owing or accruing," which have been used from the beginning, their meaning is at first sight doubtful, and it may be supposed that an "accruing debt" means something which will, in progress of time, ripen into a debt. The words had, however, clearly been interpreted under the Common Law Procedure Act to mean present debts payable immediately or in the future as in the cases of *Jones v. Thompson*, 27 Law J. Rep. Q.B. 234, and *Tapp v. Jones*, 44 Law J. Rep. Q.B. 127. With one exception, no doubt seems to have been thrown upon these cases, the first of which was decided in 1858. The Court of Appeal was not likely to disturb so uniform an interpretation of an ambiguous phrase except for very clear reasons, and the exception referred to was of considerable weight. In the case of *Re Covans*, 49 Law J. Rep. Chanc. 402, Vice-Chancellor Hall, in considering the question whether a garnishee order could be made on a receiver appointed in the Chancery Division, and deciding the question in the affirmative, said: "There are authorities which countenance the notion that the attachment must be confined to anything due when the order is made; but I think that good sense goes along with the decision in *Tapp v. Jones* which cannot be taken as having depended on the circumstance that the money in the particular instance was owing at the time." This expression of opinion was not a mere *obiter dictum*, because the Vice-Chancellor made an order extended to moneys coming into the hands of the receiver in the future; but it must now be considered as overruled, being given on a misapprehension of *Tapp v. Jones*.

It may be asked why this *status* should be given to present debts payable in the future,