

An attaching order was granted ex parte to the judgment creditor and served on the judgment debtor and the garnishee.

It was said in answer to the motion that it must fail because there is not at present nor was there at the time when the attaching order was granted, any debt due by the garnishee to the judgment debtor and also because of an assignment of the claim against the garnishee made before the order. That this first ground is correct seems to be shewn by the judgment of the Chancellor in *Burdett v. Fader*, 6 O. L. R. 532—affirmed by Divisional Court, 7 O. L. R. 72. There it was said: "The plaintiff has recovered a verdict in an action in which the entry of judgment has been stayed, so that he is not yet a creditor."

Applying that principle to the present case Scully is not yet a creditor of the garnishee, and, therefore, the garnishee is not yet his debtor. There is, therefore, nothing *debitum in presenti* and nothing on which the attaching order can operate—and it must be discharged with costs, fixed at \$20 to the garnishee, to be paid to him by applicant and to the judgment debtor to the same amount to be set off against the judgment recovered against him by the defendant.

It is not necessary to consider if there was any valid assignment of the plaintiff's claim against the garnishee made before the attaching order was made.

MASTER IN CHAMBERS.

MARCH 8TH, 1913.

JACKMAN v. WORTH.

4 O. W. N. 911.

Pleading—Statement of Claim—Motion to Strike Out Paragraph—Claim as Shareholder of Company on Behalf of Company—Personal Claim Against Company—Inconsistency—Order Made.

MASTER-IN-CHAMBERS held, that a plaintiff suing on behalf of himself and all other shareholders of a company could not join a claim for his personal benefit against the company and another.

Stroud v. Lawson, 1898, 2 Q. B. 44, followed.

Motion by defendants to strike out a certain paragraph of the statement of claim.

This action is brought by plaintiff on behalf of himself and all other shareholders of the Seneca Superior Silver Mines Ltd. except the individual defendants against such defendants and the company