

against the attaching order, and without notice to the receiver, or giving him an opportunity of doing so :

Held, that the equitable execution must prevail, and such payment did not discharge the garnishees. The effect of the order for a receiver was absolutely to preclude the judgment creditor from enforcing the order to pay over, and the garnishees from disposing of the money when received by them (otherwise than by paying it to the receiver) without leave of the court.

The duty of garnishees who have notice of circumstances affecting the right of the attaching creditor, to enforce the order to pay over pointed out.

Wood v. Dunn, L. R. Q. B. D. 72, considered.

The effect of the appointment of a receiver upon the rights of an attaching creditor considered.

Hawkins v. Gathercole, 1 Drew. 12 ; *Ames v. Birkenhead Dock Co.*, 20 Beav. 332, acted on.

WARNOCK v. KLÖPPER.

Insolvent debtor—Assignment of book-debts—
48 Vict. c. 26, s. 2 (O.).

Held, affirming the judgment of the Chy. D. 14, O. R. 288, that book-debts are a species of property covered by s. 2 of 48 Vict. c. 26 (O.), and that any gift, conveyance, assignment, transfer or delivery thereof by a debtor in insolvent circumstances is void.

Burton, J. A., dissenting.

THE PUBLIC SCHOOL TRUSTEES OF SECTION NO. 9, NOTTAWASAGA v. THE CORPORATION OF THE TOWNSHIP OF NOTTAWASAGA.

Division Courts Act, R. S. O. (1887), c. 51, ss. 77, 78—*Splitting cause of action—Abandoning excess—Res judicata—Public School Acts*, 43 Vict. c. 33, s. 4 ; 48 Vict. c. 49, s. 126 ; R. S. O. 1887, c. 225, s. 117—*Right of trustees to whole proceeds of rates levied for school purposes—Money had and received.*

In each of the years 1881 to 1886 inclusive, the defendants levied a rate to raise the sums

required by the plaintiffs for school purposes. The rate was imposed in good faith, as being the nearest which could be struck in order to insure the collection of the sum demanded with the necessary expenses, but in each year a small surplus was produced by it, which the council refused to pay over to the trustees, contending that they were entitled to retain and apply it toward payment of any sum which might be demanded by the trustees in a future year, as in the case of an excess collected on account of a special municipal tax for a local object under s. 365 of the Municipal Act.

Held, affirming the judgment of the County Court, that this section did not apply, and that the money having been collected for school purposes, the council was required by the statute to pay it over to the trustees in each year. It was not intended by the Consolidated Public Schools Act of 1885, 48 Vict. c. 46 ; R. S. O. 1887, c. 125, to alter the law in this respect.

The difference between the powers of public school trustees and of the Roman Catholic separate school trustees to levy school rates by their own authority observed upon.

In 1887 the plaintiffs sued the council in the Division Court for the surplus rates received by them in 1881, and recovered judgment therefor. They afterwards brought this action in the County Court for the surplus received in the five subsequent years. The defendants contended that the claim was *res judicata* by reason of the judgment in the Division Court, and also that the plaintiffs were not entitled to recover, because by suing in the Division Court for the surplus of 1881 alone, they had divided their cause of action into two or more suits, contrary to s. 77 of the Division Courts Act, R. S. O. 1887, c. 51.

Held, reversing the judgment of the County Court, (1) That the recovery in the Division Court being for a wholly distinct and separate cause of action, and not upon a balance of account under s. 77, or after abandonment of the excess under Rule No. 7, was no defence to an action for the surplus rates received by the defendants in the subsequent years ; (2) That if there had been a splitting of the cause of action within the meaning of the Act, by suing for the surplus of one year alone, the objection should have been taken as a defence,