

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

T. N. Phelan, for the appellants.

No one appeared to oppose the appeal.

MEREDITH, C.J.C.P., delivering judgment, said that the solicitors assumed that they had a lien upon the moneys in question, and then asked the Court to hold that the Creditors Relief Act did not deprive them of it; and it was obvious that they never had any such right, never having had possession of or any control over the moneys. Having recovered the judgment for their client, and attached the moneys, only they had the right to seek the equitable interference of the Court in aid of any equitable right they might have to payment of their costs out of these moneys: see *Hough v. Edwards* (1856), 1 H. & N. 171, and *Mercer v. Graves* (1872), L.R. 7 Q.B. 499: a right now expressly given in Rule 689.

Under the Creditors Relief Act, sec. 5(1), moneys attached in garnishee proceedings are deemed to be so attached for the benefit of all creditors.

Any right the solicitors can have cannot be greater than the right of their client. Anything that may have been preserved or recovered has been recovered for the client's benefit; there is no conflict of interest between solicitors and client: see *Francis v. Francis* (1854), 5 D. M. & G. 108, and *Re Harrauld*, *Wilde v. Walford* (1884), 51 L.T.R. 441.

The solicitors relied on *Bell v. Wright* (1895), 24 S.C.R. 656, but it is not in point, being a case of set-off of debts to the prejudice of a solicitor's claim.

The Creditors Relief Act, sec. 6(2), in unmistakable words, provides that the moneys in question shall go to the creditors, who come within its provisions, ratably, less the costs of the garnishee proceedings, which the attaching creditor—the client in this case—is to have. How then can client or solicitor have more than that?

The appeal should be dismissed.

LENNOX, J., was of opinion, for reasons stated in writing, that the appeal should be dismissed.

RIDDELL and MASTEN, JJ., agreed that the appeal should be dismissed.

*Appeal dismissed without costs.*