



BY AUTHORITY.

ANNO QUADRAGESIMO QUINTO VICTORIÆ REGINÆ.

CAP. XVII.

An Act to provide for Garnishee or Trustee Process.

Passed 6th April 1882.

BE it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. When a Judgment has been obtained in the Supreme or County Court in any action where the amount remaining due on such judgment exceeds the sum of eighty dollars, it shall be lawful for the party obtaining such judgment (hereinafter called the Judgment Creditor), at any time thereafter to attach and recover in the manner hereinafter provided, the whole or part of any debt or debts, sum or sums of money due and owing to the party against whom such judgment shall have been obtained (hereinafter called the Judgment Debtor), from any other party (hereinafter designated the Garnishee), or sufficient thereof to satisfy the amount of such judgment, subject always to the rights of parties other than the judgment debtor, to the debts or sums of money owing from such garnishee; and it is hereby declared that all the provisions of this Act shall extend to all moneys or debts due to the judgment debtor from or by any foreign Company doing business within this Province by an authorized agent, so far as it may be necessary to reach the moneys or effects of such Company in the hands or under the control of such agent.

2. A judgment creditor may apply to the Judge of the County Court, or if such Judge do not reside in the County, then to the Clerk of the Peace, for an order that the judgment debtor shall be orally examined on oath before the Judge of the County Court or Clerk of the Peace, as to any and what debts or sums of money are owing to him, and the Judge or Clerk of the Peace may make such order for the examination of the judgment debtor, naming the time and place thereof, and for the production of any books or documents, and the examination shall be conducted in the same manner as in the case of an oral examination of an opposite party; such order shall be personally served on the judgment debtor, and disobedience by him shall be punishable in case of the order of the Judge as in other cases of disobedience of a Judge's order, and in case of disobedience to the order of the Clerk of the Peace, by the Judge of the County Court by attachment on affidavit of the facts.

3. Application to the Judge of the County Court may be made *ex parte* by or on behalf of any judgment creditor, and either before or after the oral examination mentioned in the preceding Section, on affidavit that the judgment was recovered and when, and that the whole or some part and how much thereof remains unpaid and unsatisfied, and that the deponent has reason to believe and does believe that some one or more parties (naming them, or stating that he is unable to name them), is or are within the Province, (or in case of a foreign Company, that such Company is doing business within this Province by an authorized agent, as deponent believes, and naming such agent, or stating that he is unable

to name him), and is or are indebted to or liable to pay a sum of money to the judgment debtor, and that it is necessary in the interest of justice that an attaching order should be issued for an attaching order, which order said Judge is hereby authorized to make, if satisfied that it is necessary in the interest of justice that the same should be issued, stating therein that all debts or sums of money owing to the judgment debtor, or so much thereof, or certain of them, being such portion of said debts as he may in his discretion deem reasonable and proper, and stating in said order with sufficient certainty, what debts or parts of debts he adjudges shall be attached, which order may be in the form (A) or similar thereto in the Schedule to this Act. Such attaching order may be served and shall have force in any County in the Province; but in no case shall garnishee issue on judgments obtained for debt, unless such judgment, independent of costs incurred in the suit, shall exceed forty dollars.

4. The judgment debtor or any of the garnishees may within twenty days after service of the attaching order (A), apply to the Judge who issued the same for a Summons on the plaintiff, to shew cause why the attaching order should not be set aside or altered as circumstances may require, or why the debt or debts attached should not be released or partially released, and they may for that purpose contest the truth of the affidavits upon which the attaching order was obtained, or may shew that the same is not in conformity with this Act, and the Judge may make absolute or discharge such Summons with or without costs, or may make such other order therein as to the Judge shall seem just.

5. The service of such attaching order on any garnishee, shall have the effect (subject to the rights of other parties), of attaching and binding in his hands or in the hands of any such Company, all debts and sums of money then owing from him or any such Company to the judgment debtor, or sufficient thereof to satisfy such judgment, and a payment by the garnishee into the Court in which the judgment has been obtained, or on the order of a Judge of the County Court to the judgment creditor, of the debt or sums of money so attached, to the extent unsatisfied on such judgment, shall be a discharge to that extent of the debt or sum of money owing from the garnishee to the judgment debtor.

6. Any payment by the garnishee after service on him of such order, to any other one than the judgment creditor, or into Court, to satisfy the said judgment, shall to the extent of the judgment creditor's claim be void, and the garnishee shall, notwithstanding such payment, be liable to pay the same to the extent of the judgment creditor's claim, if of sufficient amount, or if not, then to the extent of the debt or sum of money owing by the garnishee to the judgment debtor.

7. The Judge of the County Court, by the attaching order or by any subsequent order, may order that the garnishee shall appear before him or before the Clerk of the Peace, to shew cause why he should not pay the judgment creditor the debt or sum of money owing from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt.

8. At the hearing under the said order, if the garnishee appear and do not dispute the debt or sum of money due or owing or claimed to be due or owing from him to the judgment debtor, or if the garnishee do not appear, then upon due proof by affidavit of the service of the order, and on sufficient proof by affidavit or oral evidence of the amount owing