

MORSON, JUN. CO.J.

APRIL 28TH, 1903.

TENTH DIVISION COURT, YORK.

WICKETT v. GRAHAM.

*Division Courts—Attachment of Debts—Remuneration of Alderman—  
Debt Due or Owing—Statutory Obligation—Time of Service—  
Public Policy.*

This was an action on a promissory note for \$100 and interest and notarial, made by J. J. Graham, the primary debtor, in favour of Hector Lamont, and by him indorsed over to S. R. Wickett, the primary creditor. The corporation of the City of Toronto were made garnishees, and the remuneration due the primary debtor as alderman, was attached in their hands.

M. H. Ludwig, for the primary creditor.

H. L. Drayton, for the primary debtor, did not dispute his liability on the note, but contended that his aldermanic remuneration was not garnishable, on two grounds: (1) Because it is not a debt due, within the meaning of the Division Courts Act. (2) Even if it were, it is exempt on the ground of public policy.

MORSON, JUN. CO.J.—By sec. 179 of the Division Courts Act, to entitle a primary creditor to judgment against a garnishee, there must be at the time of the service of the summons on the garnishee, a debt due or owing from the garnishee to the primary debtor; and by sec. 192 of the same Act, there must be an amount owing from the garnishee to the primary debtor. Now, the word "owing" implies a debt, and a debt in law is, whatever one owes, or a sum of money due by virtue of an agreement, express or implied; so that in order to entitle the primary creditor to succeed in this case against the garnishees, the corporation of the city of Toronto, he must shew that there was a debt of this nature due by the corporation to the primary debtor at the time of the service of the garnishee summons upon them. By 57 Vict. ch. 50, sec. 3, in cities having a population of 100,000 or over, the right is given the city council, by by-law, to remunerate the aldermen in an annual amount not exceeding \$300. In pursuance of this Act, the council of the city of Toronto, on the 4th June, 1894, duly passed a by-law (No. 3255) by which the aldermen are allowed and paid \$300 per annum in equal quarterly payments on the last days of March, June, September, and December in each year. It is the remuneration under this by-law that is now garnished.

Is this, then, a debt such as I have described, arising out of a contract, express or implied? It clearly is not,—but is only an obligation to pay, arising out of, and by force of, the