

Can McKee, as one intervening, do, as against the primary creditors, what the garnishee has not done, and what, in my opinion, he had a right to refrain from doing?

Assuming that McKee is a party interested in these garnishee proceedings, he is entitled, under sec. 193, to set up any defence as between the primary creditor and primary debtor which the latter would be entitled to set up in an ordinary action, and also any such defence as between the garnishee and primary debtor, and "may also shew any other just cause why the debt sought to be garnished should not be paid over or applied in or towards the claim of the primary debtor." The mere fact that McKee is a creditor of Lenz, and has an accepted order for the amount of his claim upon the garnishee, is not, in my opinion, a just cause. If it is in the power of the garnishee to submit to the jurisdiction of the Court, then an intervener ought not to be allowed, in his own interest, but to the prejudice of the primary creditor and against the wish of the garnishee, to say that the Court shall not entertain such jurisdiction.

If McKee, by his assignment, of which it appears the garnishee had notice, has acquired any rights against the garnishee, he can enforce these.

If the garnishee proceedings are void for want of jurisdiction, it may be that they will not protect the garnishee in paying over this money. That is a matter between the garnishee and the primary debtor, or between the garnishee and McKee, but it ought not to be raised as between the primary creditors and garnishee, unless by the garnishee himself. "Just cause" is said to be "substantial reason in law, and it means a good and substantial reason as against these primary creditors, who are entitled to their money and to the fruits of proceedings regularly taken, and without objection by either the primary debtor or garnishee.

If any question arises as to priority of McKee over any primary creditor, or as to his being entitled to the money under his assignment, it may be that he can apply under sec. 200.

This is a case of jurisdiction of the person, and it is a jurisdiction which may be acquired by "voluntary appearance either in person or by attorney:" see *Am. & Eng. Encyc. of Law*, vol. 17, p. 1064; *Preston v. Lamont*, 24 W. R. 928.

I think appeal should be allowed with costs.

FALCONBRIDGE, C.J.—I agree with my brother Britton's reasoning and conclusions in this case. The appeal is, therefore, allowed with costs.