

who claimed an interest in the moneys garnished, also assigned her interest in said moneys to her husband's assignee. An order was subsequently made discharging the garnishees, on payment of moneys into Court. An issue was directed to be tried in the Division Court, to ascertain who was entitled to the moneys, and judgment given in favor of Lang & Co., on the 2nd Nov., 1895. On the 25th Nov., 1895, writs of execution were placed in the hands of the sheriff of the County of Elgin, and on the 2nd Jan., 1896, an order was made for payment of the moneys out of Court to the sheriff for distribution under the Creditors' Relief Act. From this decision Lang & Co. appealed to a Divisional Court.

Held, that by the result of the proceedings and judgment in the Division Court, the question of the title to the fund was *res judicata*.

The Division Court having found the attaching creditors entitled as against the assignee for benefit of creditors, there is no debt or fund of the debtors in the County of Elgin. Sec. 37 of the Creditors' Relief Act must be construed to refer only to a case where facts would entitle a sheriff, if there had been no attaching order issued by a creditor, to obtain an attaching order at his own instance under sub-sec. 1, and to entitle him to such, there must be executions in his hands, and not sufficient lands and goods to satisfy them, and a debt by a person resident in the sheriff's county.

Wood v. Joselin, 18 A.R. 59, followed.

W. R. Riddell and *F. J. Travers*, for appellants.

N. W. Rowell, for the sheriff.

W. H. Blake, for the assignee.

Divisional Court.

BOYD, C., STREET, J. }
MEREDITH, J. }

Jan. 17.

RE MCCABE v. MIDDLETON.

Division Courts—Garnishee proceedings—"Cause"—"Action"—Jurisdiction.

This was an appeal by the primary debtor from an order of Rose, J., (noted ante p. 31) granting a mandamus to the Judge of the Third Division Court of the County of Elgin, directing him to proceed with the hearing of a plaint in a garnishment proceeding transferred to that court from the First Division Court of the County of York.

Held, that if a proceeding under sec. 185 is begun in the wrong court, sec. 87 gives plain authority to transfer it to the proper forum, *i.e.*, to the place of residence of the garnishee, if within Ontario. This section applies to all processes issued in the Division Court, "process" being defined by rule 2 (15) as "any summons issued under the seal of the court." By sec. 80 the claim or action or proceedings being transferred from the County of York to the County of Elgin, the residence of the garnishees, that local court became seized of the whole, with ample jurisdiction to deal with all matters in controversy on the merits. Sec. 81 gives the alternative proceeding in choice of courts as between the cause of action and the defendant's residence in ordinary litigation; but that is displaced if the garnishee element is introduced contemporaneously