

ATTACHMENT OF DEBTS IN DIVISION COURTS.

for an attaching order under the first sub-section of section 6. The question has been answered in this way by some of those Judges who have given time and thought to its consideration; the affidavit required under the first sub-section of section 6, shews (1st) the recovery of a judgment and when; (2nd) that some one or more parties is or are within the Province, and is or are indebted to the primary debtor, &c.; then the attaching order issues, the service of which has the effect of attaching and binding all debts due to the primary debtor. This section and the form C in the schedule shew the intention of the Legislature to have been that all debts owing to the primary debtor from any party in the Province should be attached and bound to the extent unsatisfied on the judgment, and a payment by a garnishee into Court, or to the primary creditor, of the debt attached is declared to be a discharge to the extent of the debt owing from the garnishee to the primary debtor. The attaching order may be served and is binding in any county. The summons issued by the clerk, to be effectual under sub-section 4, can only be legally issued from a Division Court, and can only be served in the Division in which the garnishee resides or carries on business, and can only include one garnishee on a separate debt; whilst the attaching order of the Judge binds *all debts*, (all over the Province) due by all such parties, whether such debts are joint or several debts or not. The summons by the clerk calls the garnishee before the Court to answer the claim and state whether he owe any and what debt to the primary debtor, and why he should not pay it to satisfy the judgment. The order by the Judge merely attaches the debt, and must if necessary be followed up by the primary creditor by subsequent proceedings in the proper Division Court, in any and every

county where garnishees reside or carry on business, until his judgment is satisfied; so that if there be only one debt to attach or if the garnishees are all within the jurisdiction of the Division Court issuing the process, a Judge's attaching order may be dispensed with by issuing a summons for each garnishee.

This, we have no doubt, will present a new view of this interesting subject to many of our readers, but those introductory words of sub-section 4, "*Whether any such attaching order shall or shall not have been made,*" lead us strongly to the conclusion, that the view taken by some of our most experienced County Judges to whom we allude is correct, and if there be doubt upon it, it should be settled by the Legislature now in session.

There exists a contrariety of practices under section 7, "when the primary creditor's claim is not a judgment," arising from a difference of opinion as to whether a summons issued in the proper Division, as to the garnishee, can properly cite a primary debtor to a Court other than which would have jurisdiction, supposing the proceedings were an ordinary suit for the recovery of the same debt; this contrariety should be set at rest by legal enactment. The 7th section provides with certainty for the case of the garnishee; he must be summoned to the Court in the Division in which he lives or carries on business; nothing whatever is laid down as to the primary debtor, excepting that, if practicable, the summons must be served on him unless the Judge shall, for sufficient reason, dispense therewith. The question here arises, have the rights of an ordinary defendant been taken away from the primary debtor on the mere allegation and for the convenience and advantage of a primary creditor? We think not, and that a Judge could not for any reason of such mere convenience of the creditor and garnishee, dispense with service, but