

ATTACHMENT OF DEBTS IN DIVISION COURTS.

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The Member for London has introduced in the Provincial Legislature, a Bill proposing to limit the right of attaching debts by exempting the wages of workmen and labourers from liability to seizure, to satisfy creditors. Since the passing of the Act of 1868-9, respecting Division Courts, the right to garnishee debts has been found an efficacious means in the hands of creditors for recovering small sums which thousands of dishonest debtors previously contracted and kept beyond their reach. The right extends to "any debt due or owing to the debtor from any other party." We do not, for a moment, question the *bona fides* of the motives which have suggested the proposed legislation, but it would be idle to deny that there have been those who have evinced a morbid desire to pander to ignorance and sympathise with the *poor debtor*, to the total disregard of the rights and privileges of the *poor creditor*.

It may be that this Bill will not go beyond a second reading. But in the possibility of the law on this subject undergoing change, it is proper for us to refer to decisions that have been made under the Act, which, if not correct expositions of the intention of the Legislature, ought to be placed beyond doubt by an amending statute. It has been held that the costs of a primary creditor cannot be recovered against a garnishee unless the garnishee disputes the debt claimed,—that so much of the debt attached and no more than will satisfy "the claim" and "to the extent of the primary debtor's claim" only—can be held liable, that the Act provides nothing for costs, that the proceeding interposes an authority for forcing away from a primary debtor a chose in action which he, and he only, can dispose of and control, and that any sum which is not taken from him by the force of this

statute, is still vested in himself; the Act only providing a discharge for so much; so that for any sum which is not legally attached the garnishee is still liable to be sued by the primary debtor; for that can only be legally attached which the statute says shall be, and all the rest the garnishee must pay to the primary debtor, and that whatever may not be legally recovered by this proceeding of garnishment may be recovered by some other. Without committing ourselves to any particular opinion on this subject, we may mention that the question was brought before the County Judges at their last meeting, and as we have stated in a previous number, a paper was read maintaining this view with some conclusiveness and force. The large majority of those present concurred in it, so that if the intention of the Legislature was really to enable primary creditors to recover costs in cases where the fund in the hands of garnishees will admit of it, the statute should be amended in order to prevent hardship, and thereby make this very useful provision more efficient than it is at present in counties where Judges hold the view we have mentioned.

Another question has been mooted which is of some consequence to creditors to consider, particularly if proceedings by garnishment are to be taken at their own costs and charges; and it is this: by sub-section 4 of section 6, it is enacted that "whether any such attaching order shall or shall not have been made the primary creditor" &c., may summon the garnishee in the form D in the schedule. A reference to the form shews that the clerk issues the summons—which is to be served on the garnishee; section 9 gives the same effect to the issuing and serving of that summons as is given by the 2nd sub-section of section 6; the question has arisen what is the need or use with this provision of applying to the Judge on affidavit