

DIARY FOR SEPTEMBER.

2. Tues.. Court of Appeal Sittings begin.
3. Wed.. Sir Edward Coke died, 1634, et. 62.
4. Thur.. Chancery Division High Court of Justice sits.
5. Sun.. 14th Sunday after Trinity.
6. Mon.. Trinity Term Commences.
9. Tues.. General Sessions and County Court Sittings for Trial in York.
12. Fri.. Frontenac, Governor of Canada, 1692.
13. Sat.. Quebec taken, and death of Wolfe, 1759.
14. Sun.. 15th Sunday after Trinity. Sir J. S. Copley (Lord Lyndhurst), Master of the Rolls, 1826.
17. Wed.. First Parliament of Upper Canada met at Niagara, 1792.
19. Thur.. Quebec surrendered to the British, 1759.
20. Sat.. Trinity Term ends.
21. Sun.. 16th Sunday after Trinity.
22. Tues.. Courcelles, Governor of Canada, 1655.
23. Sun.. 17th Sunday after Trinity. W. H. Blake, 1st Chan. U. C., 1849.
29. Mon.. St. Michael and all Angels.
30. Tues.. Sir Isaac Brock, Administrator, 1811.

Reports.

IN THE FIRST DIVISION COURT OF
THE COUNTY OF YORK.

WOOD v. JOSELYN AND SHEPPARD, GAR-
NISHEE.

*Garnishing summons—Effect of—Priority of
assignment for benefit of creditors under R.
S.O., c. 124, s. 9—Division Court's Act, s-s.
173, 185, and 189.*

When the primary debtor, after judgment obtained against him and service of a garnishing summons on the garnishee, but before final order for payment against garnishee, makes an assignment for the benefit of his creditors, the assignee takes priority over the garnishing creditor, by virtue of the provisions of sec. 9 of R.S.O., c. 124.

TORONTO, May 31, 1890.

This was an action brought by John Wood & Sons, to recover the sum of \$171.40 from H. Joselin and Son and one John Sheppard, who was made a party (garnishee) to attach a debt alleged to be due by him to H. Joselin & Son, the primary debtors.

MORGAN, J.J.: On the return of the summons in this action, the primary debtors did not appear or make any defence, and I gave judgment against them in favor of the primary creditors, for the sum of \$171.40 and costs of suit, and I then adjourned adjudication on the claim against the garnishee until the termination of an action in the High Court of Justice between the primary debtors and the garnishee, wherein the alleged debt garnished was in litigation between them. This action has since been determined in favor of the primary debtors, and I am now called upon to determine the right of the primary creditors to the debt or fund garnished

No evidence was given, all material facts being admitted.

The garnishee Sheppard now admits a liability between him and the primary debtors for more than sufficient to satisfy the claim and judgment of the primary creditors, and submits to pay same upon the order of this Court, but alleges that since the service on him of the garnishing summons in the action, and pending adjudication on the garnishment branch of this action, the primary debtors have made an assignment for the general benefit of their creditors, and that the fund garnished had been paid by the assignee.

The assignee also intervenes, and claims under the assignment the fund garnished, and the primary debtors, so far as they have any right to do so, support the contention of the assignee.

The assignment is under and within the statute R.S.O., chap. 124.

It is urged on the part of the primary creditors that by force of the garnishing or attaching summons, and sections 173, 185, and 189 of the R.S.O., chap. 51 (Division Courts Act), the fund or debt in the hands of the garnishee, or due by him to the primary debtors, was attached to answer the claim of the primary creditors, and thereupon became a security to the primary creditors, and that the property in the debt or fund garnished was, on the garnishee being served with the summons in the action, transferred from the primary debtors to and became vested in the primary creditors, and that, therefore, the assignment by the primary debtor for the general benefit of his creditors, executed as it was after the service of the garnishing summons, did not pass to the assignee any title to the garnished debt, because by section 4 of the R.S.O., chap. 124, such assignment would under the statute only pass to the assignee the estate of the assignor belonging to him at the time of the assignment.

This contention, supported as it is by a long line of cases in the English and in our own Courts, would have been unanswerable but for section 9 of chap. 124, R.S.O. This section was, in my judgment, intended by the Legislature to have the same operation as section 45 of the English Bankruptcy Act of 1883, namely, to secure to the general creditors of an assignor or insolvent *pro rata* distribution among them, under an assignment for their benefit, all the