

Div. Court.]

FAIR V. JAMES—GRAND TRUNK RAILWAY, GARNISHEE.

[Div. Court.]

surely it is absurd to presume that after all the efforts I had been making to have the matter settled before I left town amicably, that I would have been so discourteous or unreasonable as not to have been quite willing to have shewn every consideration and courtesy had the clerk expressed any willingness to change the cheque or pay the amount. This I wished to do with all candour and fairness."

I see no ground for my assuming that this attorney made efforts to have the matter amicably settled. I can only see that the attorney was acting in the most rigid way to recover his bill of costs (\$25 of which he was not entitled to), and without any excuse for the vexatious proceeding of placing the *fi. fa.* in the sheriff's hands, and inflicting further unnecessary costs on the plaintiffs.

On the whole the order will go to enter satisfaction on the roll; the defendant's attorney retaining out of the moneys paid in to abide the result of the application, \$179.72, amount of the judgment after revision of the taxation of costs, and that the defendant refund to the plaintiff's attorney the surplus, \$25.69, and that the defendant's attorney pay to the plaintiff's attorney the costs of this application, which I fix at \$10.

Order accordingly.

DIVISION COURT CASE.

BEFORE HIS HONOR JUDGE JONES.

(Reported by B. F. FITCH, Esq., Barrister-at-Law.)

FAIR V. JAMES.

GRAND TRUNK RAILWAY, Garnishees.

Division Court Act, 32 Vic. ch. 23 (Ont.)—Jurisdiction of Division Court under garnishee clauses—Foreign railway—Place of business.

Section 7, sub-sec. 1, of the Ontario Division Court Act, 32 Vic. ch. 23, provides that the garnishee summons shall issue "out of the Division Court of the division in which the garnishee lives or carries on business."

Held, in case of a foreign railway doing business within this Province, to mean that proceedings may be taken in the division in which the principal offices for the Province are located.

By 29 & 30 Vic. ch. 92, the Grand Trunk Railway Co., whose head office is at Montreal, leased the Buffalo and Lake Huron Railway, whose principal offices were at Brantford.

Held, that garnishee proceedings against the Company were properly taken at Brantford.

[Brantford, 1870—Jones, Co. J.]

In this case the primary creditor took garnishee proceedings under 32 Vic. ch. 23, against the Grand Trunk Railway Company at Brantford, it being the principal station on the Brantford line known as the Buffalo and Lake Huron Railway, and which had been leased by the former company. The debt was for wages due the primary debtor for services on this branch line, and the cause of action arose at Brantford. It was objected by the garnishees that the Division Court of the County of Brant has no jurisdiction over the Grand Trunk Railway Company under the garnishee clause of the above act, inasmuch as the company do not reside, live, or carry on business within the meaning of the act anywhere or in any place in the County of Brant, and that they do not so reside, live or carry on business anywhere than in the City of Montreal, in the Province of Quebec.

JONES, Co. J.—Where the garnishee proceedings are taken on a judgment already recovered against the primary debtor by the 6th section of our last Division Courts' Act, sub-section 4, the summons must issue from the court of the division in which the garnishee resides or carries on business. Although the phraseology of the two sections is slightly different, the provisions are, I think, substantially the same.

The debt owing by the garnishees in this case to the primary debtor was for wages earned and payable at the Brantford station, within this division. Had the primary debtor sued the garnishees for these wages the suit could have been entered and tried in this court, as the whole cause of action arose in this division. I mention this, as in the argument before me a good deal of stress was laid by the counsel for the garnishees, upon the hardship they would be subjected to could they be called upon to answer such suits as these at every Division Court along the line. I think there is nothing in this argument, for these garnishees may now be sued as defendants in any such court, provided the cause of action arose there; and, as a rule, it is more convenient to both parties that a case should be tried in the division where the cause of action arose, and where the witnesses, if any, would probably reside, than it would be to try it at Montreal or any other place where the garnishees might carry on business.

In the English authorities cited by the garnishees the same argument of inconvenience was raised, and it had a considerable weight with the court, but there a defendant can only be sued in the district where he resides or carries on business, except the special leave of the judge is obtained to sue him where the cause of action arose; but by our Division Courts Act, as already remarked, it is optional with the plaintiff to bring his action either in the division where the defendant resides or where the cause of action arose.

The main question, however, is whether the garnishees carry on business within the meaning of the Act, at Brantford. The evidence shewed that the debt owing by the garnishees to the primary debtor was for wages due the primary debtor for services on the branch line of the railway from Buffalo to Goderich, and that the cause of action arose at Brantford, which is the principal station on that line. This branch line was originally built and owned by the Buffalo, Brantford and Goderich Railway Company as an independent line. Brantford was the principal station, and the head offices of the company were situate at that place. The manufacturing and repairing shops for the whole road were also located there. That company becoming involved sold their road to the Buffalo and Lake Huron Railway Company, who continued and extended the same business that the old company had carried on at Brantford, at which place the head offices of the company, and the machine works and manufacturing and repairing shops for the road were still continued.

The Buffalo and Lake Huron Railway Company leased their road to the garnishees. See 29 & 30 Vic. ch. 92.

The garnishees have still continued the workshops at Brantford, where they have a superintendent of those works, Mr. Jones, who employed