

No. 177.

2nd Session, 7th Parliament, 26 Victoria, 1863

BILL.

An Act to extend certain provisions of the
County Court Act of Upper Canada to
Division Courts.

Received and read, first time, Monday,
16th March, 1863.

Second reading, Wednesday, 18th March,
1863.

MR. HOOPER.

QUEBEC :

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An Act respecting the attachment of Debts in Division Courts :

Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

Preamble.

1. Any party who has had an execution in any Division Court returned *nulla bona*, either as to the whole amount or as to part, may obtain from the Clerk an order that all debts owing by or accruing from any person or persons to the judgment debtor, of amounts within the jurisdiction of a Division Court shall be attached to answer the judgment.

Attachment of debts due judgment debtor.

2. In case the Judge be satisfied upon application on oath made to him by the party in whose favor a judgment has been given, or be satisfied by other testimony that such party will be in danger of losing the amount of the judgment if compelled to wait until the return of the execution before such order is obtained, he may direct the order to issue at such time as he thinks fit.

When Judge shall issue the order.

15 PROCEEDINGS AGAINST GARNISHEES.

3. The person to or from whom such debts are owing or accruing is hereinafter called the garnishee, and service on him of the order or notice thereof to him in such manner as the Judge directs, shall bind such debts in his hands.

Effect of such attachment.

4. The order shall be for the garnishee to appear before the Clerk of the Division Court, within whose division the garnishee resides, at his office, on some day to be appointed in the said order; and the said order shall be served on such garnishee, and if the garnishee do not forthwith pay the amount due by him, or an amount equal to the judgment debt, and do not dispute the debt due or claimed to be due from him to the judgment debtor, or if he do not appear before the Division Court Clerk named in the order at his office, on the day appointed, then such Clerk, on proof of the service of the order having been made four days previous, may issue execution out of the Division Court of the Division in which such garnishee resides, to levy the amount due from such garnishee, and the bailiff to whom such writ or execution is directed shall be thereby authorized to levy, and shall levy the amount mentioned in the said execution towards satisfaction of the judgment debt, together with the costs of the proceeding to be taxed, and his own lawful fees; but if the garnishee disputes his liability, the judgment creditor shall be at liberty to proceed against the garnishee, according to the practice of the said Division Courts, for the alleged debt or for the amount due to the judgment debtor, if less than the judgment debt, and for costs of suit.

Duty of garnishee on being served.

5. Payment made by, or execution levied upon the garnishee under any such proceeding as aforesaid, shall be a valid discharge to him as against the judgment debtor to the amount paid or levied, although the proceeding should be afterwards set aside or the judgment reversed.

Effect of payment by garnishee.

Debt Attach-
Books to be
kept.

6. There shall be kept at the several offices of the Clerks of the Division Courts a Debt Attachment Book, and in such book; entries shall be made of the attachment and proceedings thereon, with names, dates and statements of the amount recovered and otherwise; and the mode of keeping such books shall be the same in all the offices, and copies of any entries made therein may be taken by any person upon application to the proper officer. 5

Costs under
this Act.

7. The costs of any application for an attachment of debt under this Act, and of any proceedings arising from, or incidental to such application, shall be, in the discretion of the Judge, subject to any general rules that may be made in reference thereto. 10

To be read as
part of Divi-
sion Courts
Act.

8. This Act shall be read as if it formed part of the Division Courts Act.