



## CHAPTER 14.

### An Act to amend the "Supreme Court Act." R. S. B. C., c. 56.

[May 11th, 1901.]

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

**1.** This Act may be cited as the "Supreme Court Act Amendment Short title. Act, 1901."

**2.** Section 74 of Chapter 56 of the Revised Statutes, being the "Supreme Court Act," as enacted by section 15 of chapter 20 of the Statutes of 1899, and section 75 of said Chapter 56 are hereby repealed, and the following sections substituted therefor:—

Re-enacts sections 74 and 75.

"74. The Full Court for the hearing of all appeals or other matters, and the disposal of all business which may be lawfully brought before it, shall sit at the City of Victoria and at the City of Vancouver, and shall hold four sittings in each year, commencing on the days following and continuing until the business before the Court is disposed of, that is to say:

Full Court sittings.

"The first sitting on the first Tuesday in January, after the third day of said month, at the City of Victoria.

"The second sitting on the first Tuesday in April, at the City of Vancouver.

"The third sitting on the first Tuesday in June, at the City of Victoria.

"The fourth sitting on the first Tuesday in November, at the City of Vancouver."

"75. In addition to the sittings hereinbefore prescribed, the Full Court may hold special sittings, either at Victoria or Vancouver, for

Special sittings of Full Court.

the hearing of any appeal or appeals which might, under the two preceding sections, be heard at the next regular sittings at either of such places.”

Settling of Appeal Book by Registrar.

**3.** The party appealing shall, before the filing of the præcipe for hearing the appeal, procure the settlement of the Appeal Book by the District Registrar of the Court from which the appeal is brought. The Registrar so settling the Appeal Book shall certify on one of the copies of the Appeal Book filed that the same has been duly settled, and the Respondent in the appeal shall be entitled to have delivered to him by the party appealing, at or before the filing of the præcipe, one copy of the Appeal Book so settled as aforesaid.

Trials not to take place within two weeks after sittings of Full Court except on order.

**4.** No cause, issue or matter shall be tried during the period of two weeks after the respective dates fixed by section 74 of the “Supreme Court Act” for the sittings of the Full Court, except upon order made by a Judge in Chambers.

Sittings of Court.

**5.** Sittings of the Court for the trial of civil causes, issues and matters shall be held as follows:—

At the various Assize towns (except Victoria and Vancouver) twice a year on the opening days of the Spring and Fall Assizes.

*At Nelson* (in addition to the said Assize sittings)—

On the second Tuesday in February, and

On the first Tuesday in December.

*At Rossland*—

On the fourth Tuesday in February,

On the second Tuesday in May,

On the second Tuesday in October,

On the second Tuesday in December.

*At Victoria*—

On the first Tuesday in February,

On the first Tuesday in March,

On the first Tuesday in May,

On the first Tuesday in July,

On the first Tuesday in October,

On the first Tuesday in December.

*At Vancouver*—

On the fourth Tuesday in January,

On the second Tuesday in March,

On the fourth Tuesday in May,

On the second Tuesday in July,

On the fourth Tuesday in October,

On the second Tuesday in December.

6. Special sittings of the Court for the trial of civil causes, issues or matters may be held at any place or time that may be fixed by the order of a Judge in Chambers. Special sittings.

7. Actions begun in any Registry may, upon an order obtained from a Judge in Chambers, be entered for trial at any regular sittings of the Court. Entry of case for trial at registry other than that in which action begun.

8. Section 45 of said Chapter 56 is hereby repealed. Repeals s. 45.

9. The said Chapter 56 is hereby amended by adding thereto the following sections:— Sections added.

*“Attachment of Debts.*

“104. A Judge in Chambers may, upon the ex parte application of any plaintiff or judgment creditor or person entitled to enforce a judgment or order for the payment of money, upon affidavit by himself or his solicitor, or some other person or persons aware of the facts respectively, stating in case a judgment has been recovered or an order made that it has been recovered or made, and that it is still unsatisfied, and to what amount, or in case a judgment has not been recovered that an action is pending, the time of its commencement, the nature of the cause of action and the actual amount of the debt, claim or demand, and that the same is justly due and owing, after making all just discounts, and stating in either of the said cases that any other person is indebted or liable to the defendant or judgment debtor, or person liable to satisfy such judgment or order, and is within the jurisdiction of the Court, order that all debts, obligations and liabilities owing, payable or accruing due from such third person (hereinafter called the garnishee) to the defendant or judgment debtor, or person liable to satisfy such judgment or order (as the case may be), shall be attached to answer the judgment of the plaintiff to be recovered, or of the judgment creditor which has been recovered, or the order which has been made (as the case may be). Debts or liabilities of garnishee to defendant or judgment debtor may be attached.

“105. Except as hereinafter mentioned, the expression ‘debts, obligations and liabilities,’ in the last preceding section, and that expression or any of the words composing it, when used in any order made under said section, shall not comprise any obligation or liability not arising out of trust or contract, unless judgment shall have been recovered thereon against the garnishee, but (though not so as to restrict further than as aforesaid the general sense of the words), the said expression in the said section or in any such order shall be construed to include all claims and demands of the defendant, judgment debtor or person liable under the order for payment of money against the garnishee arising out of trusts or contract where such claims and demands could be made available under equitable execution. Interpretation of terms “debts, obligations and liabilities” in preceding section.

Form of affidavits. “106. Affidavits in the forms in the Schedule to this Act, or to the like effect, shall be held to be sufficient.

Affidavit may be on information and belief. “107. The affidavit referred to in section 104 may, as to the indebtedness, obligation or liability of the third person, be made on the information and belief of the deponent.

Service or notice of order shall bind debts, etc. “108. Service of an order that debts, obligations or liabilities owing, payable or accruing due to the defendant, judgment debtor or person liable to satisfy such judgment or order shall be attached or notice thereof to the garnishee in such manner as the Judge shall direct, shall bind such debts, obligations or liabilities in his hands from the time of service or notice.

Amount attached limited to amount due and reasonable costs. “109. In the attaching order the amount attached shall be limited to the amount due or claimed to be due by the defendant, judgment debtor or person liable to satisfy the judgment or order, along with a reasonable sum for costs.

In default payment or defence, Judge may order payment by garnishee with costs. “110. (1.) If the garnishee does not forthwith pay into Court the amounts payable in respect of the debts, obligations and liabilities attached, or the amount limited by the attaching order, and does not dispute the said debts, obligations and liabilities, or some one or more of them claimed to be due, owing, or payable from him to the defendant, judgment debtor or person liable under the judgment or order for the payment of money, or if he does not appear upon notice to him, then the Judge may order the garnishee to pay into Court the amount appearing due from the garnishee, or so much thereof as may be sufficient to satisfy the principal judgment or order and the costs of the garnishing proceedings, or an amount estimated to be sufficient to satisfy the judgment expected to be recovered and costs, and also the costs of the garnishing proceedings, or if judgment has been recovered or an order for the payment of money made, the Judge may order the garnishee to pay to the person entitled the amount appearing due from the garnishee, or sufficient thereof to satisfy the principal judgment or order, and the costs of the garnishing proceedings.

“(2.) The order for the payment by the garnishee, whether into Court or to the person entitled, may be made on the application of the person entitled or upon the application of the defendant, judgment debtor or person liable under the principal judgment or order.

“(3.) No order shall be made for payment out of Court of moneys paid in by the garnishee or for payment by the garnishee to the person entitled, without notice to the defendant, judgment debtor, or person liable on the principal judgment or order, unless the Judge shall, under special circumstances, dispense with such notice.

Execution may issue on any such order. “111. Execution may issue upon any such order so made, or any other proceedings may be taken to enforce such order.

“ 112. If the claim or demand be not due at the time of the attachment, an order may be made for payment thereof at maturity, and execution may issue therefor when it matures. Order may apply to debt not matured.

“ 113. If the garnishee disputes his liability, the Judge, instead of making an order for payment into Court or otherwise, may order that any issue or question necessary for determining the liability of the garnishee be tried or determined in any manner in which any issue or question in an action may be tried or determined. If garnishee disputes debt, issue may be tried.

“ 114. Where, after an order for the attachment of debts, obligations or liabilities has been made, it is suggested by the garnishee that the debt, obligation or liability sought to be attached, belongs to or is claimed by some third person, or that any third person has a lien or charge upon it, the Judge may order such third person to appear and state the nature and particulars of his claim upon the same. On third party claiming, Judge may order his appearance.

“ 115. After hearing the allegations of such third person under such order, and of any other person whom by the same or any subsequent order the Judge may order to appear, or in case of such third person or other person not appearing when ordered, the Judge may order payment by the garnishee, or may order any issue or question to be tried or determined, and may bar the claim of such third person or other person, or may make such other order as he may see fit, upon such terms, in all cases with respect to the lien or charge (if any) of such third person and as to costs, as the Judge thinks just and reasonable. On hearing such third party, Judge may order trial or payment.

“ 116. A Judge may take evidence upon and hear and dispose of summarily, in Chambers, any question as to the liability of the garnishee, or as to the claim of a third party or other person, without directing a formal trial of an issue. Judge may take evidence in Chambers.

“ 117. The garnishee, upon complying with any order of the Court made respecting the debts, obligations or liabilities due or owing by him, shall be entitled to his costs as between solicitor and client. Such costs, if not ordered to be satisfied in any other way, shall be paid by the garnishing plaintiff. This provision shall not apply in case the garnishee unsuccessfully resists payment, either in whole or in part, in which case the Judge shall deal with the costs. Garnishee on complying with order to be entitled to costs.

“ 118. Payment by the garnishee into Court in compliance with an order of a Judge or satisfaction of such order either by execution, levied or otherwise, under any such proceeding as aforesaid, shall be a valid discharge as against the defendant debtor to the amount paid, levied or otherwise made, although such proceeding may be set aside or the judgment reversed. Payment into Court to be a valid discharge.

“ 119. There shall be kept by the Registrar a debt attachment book, and in such book entries shall be made of the attaching order and all proceedings thereon, with names, dates and statements of the amount Debt attachment book to be kept by Registrar.

recovered, and such book may be searched and copies of any entries made therein may be taken by any person upon application to the Registrar.

Certain Rules of Court superseded.

“120. All Rules of Court dealing with the matters referred to in said sections 104 to 119, both inclusive, are hereby superseded.”

Order for examination of judgment debtor.

**10.** When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the Court or a Judge for an order that the debtor liable under such judgment or order be orally examined as to whether any and what debts are owing to the debtor, and whether the debtor has any and what property or means of satisfying the judgment or order, before a Judge or an officer of the Court, as the Court or a Judge shall appoint, and the Court or Judge may make an order for the attendance and examination of such debtor, or of any other person, and after such examination may order and direct that the amount due under such judgment or order be paid by instalments, and may from time to time rescind or vary such order.

Re-enacts sections 85 and 88 of c. 56, R. S.

**11.** Sections 85 and 88 of chapter 56 of the Revised Statutes, 1897, repealed by section 20 of chapter 20 of the Statutes of 1899, are hereby re-enacted.

June sitting of Full Court at Vancouver.

**12.** On the third Tuesday in June, A.D. 1901, there shall be a sitting of the Full Court at the City of Vancouver for the hearing of all appeals or other matters, and the disposal of all business which may be lawfully brought before it. Any notice of appeal already given for the sittings of the Full Court which, under section 15 of chapter 20 of the Statutes of 1899, should have been held at the City of Vancouver in March and May, A. D. 1901, shall be deemed good and sufficient notice of appeal for said sittings in June, A.D. 1901.

Re-enacts proviso to sec. 32.

**13** The proviso added to section 32 of said chapter 56 by section 7 of chapter 20 of the Statutes of 1899 is hereby repealed, and the following substituted therefor:—

Chamber applications at Victoria, Vancouver and New Westminster.

“Provided, however, that in the case of a writ of summons or other proceeding issued or commenced in any Registry other than Victoria, Vancouver, or New Westminster, any application, either to the Court or in Chambers, may be made at Victoria, Vancouver, or New Westminster; and all papers in connection with any such application shall be filed at Victoria, Vancouver or New Westminster, as the case may be. An order made upon any such application shall also be entered at the Registry at which the writ of summons was issued or commenced.”

SCHEDULE.

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AFFIDAVIT IN SUPPORT OF GARNISHING ORDER AFTER JUDGMENT.

*In the Supreme Court of British Columbia.*

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
 Defendant.

I, \_\_\_\_\_ of \_\_\_\_\_, (*occupation*), make oath and say—

(1.) I am the person entitled to enforce the judgment or order hereinafter referred to,

or

(1.) I am the solicitor of the person entitled to enforce the judgment or order hereinafter referred to,

or

(1.) I am acting for the person entitled to enforce the judgment or order hereinafter referred to, and I am aware of the facts hereinafter referred to.

(2.) On a judgment entered (*or order made*) (*as the case may be*) in this action, the above-named \_\_\_\_\_ was found to be indebted to the above-named \_\_\_\_\_ in the sum of \_\_\_\_\_ dollars, and the whole of said sum still remains due, (*or and of which the sum of \_\_\_\_\_ dollars still remains due*) (*as the case may be*).

(3.) I am informed and believe that [*name, address and description of the garnishee*] is indebted under obligation or liable to the said judgment debtor, and that the said [*insert the name of the garnishee*] is within the jurisdiction of the Court.

Sworn before me, etc.

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AFFIDAVIT FOR GARNISHING ORDER BEFORE JUDGMENT.

*In the Supreme Court of British Columbia.*

Between \_\_\_\_\_ and \_\_\_\_\_  
Plaintiff,  
 Defendant.

(1.) I am the above-named plaintiff,

or

(1.) I am the solicitor for the above-named plaintiff,

or

(1.) I am acting for the above-named plaintiff, and I am aware of the facts hereinafter referred to.

(2.) This action is pending and was commenced on the \_\_\_\_\_ day of \_\_\_\_\_

(3.) The cause of action for which this action is brought is

(4.) In respect of the said cause of action the defendant is justly indebted to the plaintiff in the sum of \_\_\_\_\_ dollars after making all just discounts.

(5.) I am informed and believe that [*name, address and description of the garnishee*] is indebted, under obligation or liable to the said defendant, and that the said [*insert the name of the garnishee*] is within the jurisdiction of the Court.

Sworn before me, etc.

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GARNISHING ORDER (*Attaching Debts*).

*In the Supreme Court of British Columbia.*

(In Chambers.)

Before the Hon. Mr. Justice \_\_\_\_\_

Between \_\_\_\_\_ Plaintiff (*or Judgment Creditor, or as the case may be*)

and

Defendant (*or Judgment Debtor, or as the case may be*)

and

Garnishee.

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, I do order that all debts, obligations and liabilities, owing, payable or accruing due from the above-named garnishee (*or garnishees or any of them*) to the above-named defendant (*or judgment debtor, or as the case may be*), be attached to answer a judgment to be recovered by the above-named plaintiff against the above-named defendant in the Supreme Court of British Columbia, up to the amount of \$ \_\_\_\_\_ (*or a judgment recovered by the above-named judgment creditor against the above-named debtor in the Supreme Court of British Columbia on the day of \_\_\_\_\_, 19\_\_\_\_, for the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents, on which judgment the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents is now due and unpaid, or an order made in the Supreme Court of British Columbia by the Honourable Mr. Justice \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by which the above-named \_\_\_\_\_ was ordered to pay to the above-named \_\_\_\_\_ the sum of \_\_\_\_\_ dollars, of which the sum of \_\_\_\_\_ dollars is now due and unpaid, or as the case may be*).

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

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GARNISHING ORDER (*Absolute*).*In the Supreme Court of British Columbia.*

(In Chambers.)

Before the Hon. Mr. Justice

Between

Plaintiff (*or Judgment Creditor, or as the  
case may be*)

and

Defendant (*or Judgment Debtor, or as  
the case may be*)

and

Garnishee.

Upon reading the affidavit of \_\_\_\_\_, filed the  
day of \_\_\_\_\_, 19\_\_\_\_, and the order made by the Honourable  
Mr. Justice \_\_\_\_\_, whereby it was ordered that all debts,  
obligations and liabilities owing, payable or accruing due from the  
above-named garnishee (*or as the case may be*) to answer (*continue  
as in attaching order and refer to any other material used on the  
motion*), and upon hearing \_\_\_\_\_ and  
(or the said \_\_\_\_\_ having been duly served with notice of  
this motion and not having appeared, *or as the case may be*),

I do order that the above-named garnishee (*or as the case may be*)  
do forthwith (or on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_) pay  
to the said plaintiff (*or as the case may be*) the sum of \_\_\_\_\_  
dollars and \_\_\_\_\_ cents due (*or payable, or on that day to become  
due or payable*) from the said garnishee (*or as the case may be*) to the  
said defendant (*or as the case may be*).

*(Add any directions as to costs or otherwise.)*

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

VICTORIA, B. C.

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