

# *The Attachment of Debts Act*

*being*

Chapter 59 of *The Revised Statutes of Saskatchewan, 1920*  
(Assented to November 10, 1920).

## **NOTE:**

**This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.**

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## CHAPTER 59

### An Act respecting the Attachment of Debts

#### SHORT TITLE

##### Short title

- 1 This Act may be cited as *The Attachment of Debts Act*.

1919-20, c.82, s.1; R.S.S. 1920, c.59, s.1.

#### INTERPRETATION

##### Interpretation

- 2 In this Act, unless the context otherwise requires, the expression:

##### “Court”

1. “**Court**” means His Majesty’s Court of King’s Bench for Saskatchewan;

##### “Judge”

2. “**Judge**” means a judge of His Majesty’s Court of King’s Bench for Saskatchewan.

1919-20, c.82, s.2; R.S.S. 1920, c.59, s.2.

#### GARNISHEE SUMMONS AND SERVICE

##### Issue of garnishee summons

3(1) Any plaintiff in an action for a debt or liquidated demand, before or after judgment, and any person who has obtained a judgment or order for the recovery or payment of money, may issue a garnishee summons (form A), with such variations as circumstances may require.

(2) Such summons shall be issued by the local registrar upon the plaintiff or judgment creditor, his solicitor or agent filing an affidavit:

- (a) showing the nature and amount of the claim or judgment against the defendant or judgment debtor, and swearing positively to the indebtedness of the defendant or judgment debtor to the plaintiff or judgment creditor;
- (b) stating that to the best of the deponent’s information and belief, the proposed garnishee (*naming him*), is indebted to such defendant or judgment debtor, and if the debt is in respect of wages or salary, stating where and in what capacity the judgment debtor was or is employed by the said garnishee.

1919-20, c.82, s.3; R.S.S. 1920, c.59, s.3.

##### Debts owing from firm

4 Debts owing from a firm carrying on business within Saskatchewan may be attached, although one or more members of such firm may be resident abroad:

Provided that some person having the control or management of the partnership business, or some member of the firm within Saskatchewan, is served with the garnishee summons.

1919-20, c.82, s.4; R.S.S. 1920, c.59, s.4.

**Service binds debts**

5(1) Service of such summons on the garnishee shall bind any debt due or accruing due from the garnishee to the defendant or the judgment debtor.

(2) The garnishee summons may be served, whether on the garnishee, defendant or judgment debtor, in any way that a writ of summons may be served; and the provisions relating to service of a writ of summons shall apply to service of a garnishee summons.

(3) A copy of the garnishee summons shall be served on the defendant or judgment debtor (or his solicitor) within twenty days after service on the garnishee, or within such further time as the court or a judge may order *ex parte*.

1919-20, c.82, s.5; R.S.S. 1920, c.59, s.5.

**Saskatchewan Government, garnishment against**

6(1) The Government of Saskatchewan may be garnisheed under the provisions of this Act with regard to moneys due or accruing due to persons permanently employed by it.

(2) Such garnishee process shall be served upon the Provincial Treasurer or Deputy Provincial Treasurer in their respective offices.

1919-20, c.82, s.6; R.S.S. 1920, c.59, s.6.

## SETTING ASIDE THE GARNISHEE SUMMONS

**Application to set aside garnishee**

7 The defendant or judgment debtor or the garnishee, or any person claiming to be interested in the moneys attached, may apply to a judge in chambers to set aside the garnishee summons.

1919-20, c.82, s.7; R.S.S. 1920, c.59, s.7.

## DISPUTE BY GARNISHEE

**Dispute by garnishee**

8(1) If the garnishee disputes his liability or claims that the debt is not attachable, he shall enter with the local registrar, within the time specified in the summons or such further time as the court or a judge may allow, a statement showing the grounds on which he disputes liability or claims that the debt is not attachable.

(2) When such statement has been entered, the court or a judge may, on application of the plaintiff or any other person interested, on two days' notice given to the garnishee:

(a) fix a time and place for summarily determining the question of liability or whether the debt is attachable; or

(b) order that any issue or question necessary for determining such liability, or whether the debt is attachable, be tried and determined in any manner in which an issue or question in any action may be tried or determined;

and may direct who shall be the parties to such issue or question.

(3) Any determination under this section whether summarily or otherwise shall form a judgment of the court and may be enforced as such.

1919-20, c.82, s.8; R.S.S. 1920, c.59, s.8.

**Delay by plaintiff**

**9** If within two months after the garnishee has entered the statement referred to in the preceding section, the plaintiff or judgment creditor does not proceed to have the question of liability determined as hereby provided, the garnishee may apply for an order to set aside the garnishee summons.

1919-20, c.82, s.9; R.S.S. 1920, c.59, s.9.

### PAYMENT INTO AND OUT OF COURT

**Garnishee's costs**

**10** A garnishee paying money into court shall be entitled to deduct therefrom his necessary disbursements and costs (not exceeding \$5), except when the debt due from him to the defendant or judgment debtor is larger than the amount of the plaintiff's claim and costs, in which case the garnishee may deduct such costs and disbursements out of the balance in his hands, but if such balance is not sufficient to cover such disbursements and costs, he may deduct the difference from the amount to be paid into court.

1919-20, c.82, s.10; R.S.S. 1920, c.59, s.10.

**Order for payment to plaintiff**

**11(1)** No order shall be made against the garnishee, or for payment out of any money paid into court by the garnishee, until at least ten days after service of the summons on the defendant or judgment debtor and on the garnishee, nor when a garnishee summons issues prior to judgment until the plaintiff has recovered a judgment against the defendant.

(2) No money paid into court under these proceedings shall be paid out except on the written consent of the parties interested or by order of the court or a judge, which order may be made *ex parte* or on such notice as the court or judge may direct.

1919-20, c.82, s.11; R.S.S. 1920, c.59, s.11.

### DETERMINING THE INTEREST OF THIRD PERSONS

**Suggestion of claim of third party**

**12** Whenever it is suggested by the garnishee, or any person claiming to be interested, that the debt attached belongs to some third person or that any third person has a lien or charge upon it, the court or a judge may order such third person or any other person to appear and state the nature and particulars of his claim upon such debt.

1919-20, c.82, s.12; R.S.S. 1920, c.59, s.12.

**Procedure in determining claim**

**13** After hearing the allegations of any third person under such order as in section 12 mentioned, and of any other person whom by the same or any subsequent order the court or a judge may require to appear, or in case of such third person not appearing when ordered, the court or judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding sections of this Act, and may bar the claim of such third person, or make such other order as such court or judge thinks fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the court or judge thinks just and reasonable.

1919-20, c.82, s.13; R.S.S. 1920, c.59, s.13.

**JUDGMENT AND EXECUTION****Default by garnishee**

**14** If the garnishee does not pay into court the amount due from him to the debtor or an amount equal to the claim or judgment and costs, and does not dispute the debt due or claimed to be due from him to the debtor, then the court or a judge may, after judgment has been entered against the primary debtor or at once when the garnishee summons is founded on a judgment already recovered, order that judgment be entered up against the garnishee and that execution issue, and it may issue accordingly, to levy the amount due from such garnishee or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

1919-20, c.82, s.14; R.S.S. 1920, c.59, s.14.

**Garnishee discharged by payment or levy**

**15** Payment made by or execution levied upon the garnishee as aforesaid shall be a valid discharge to him against the judgment debtor to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reversed.

1919-20, c.82, s.15; R.S.S. 1920, c.59, s.15.

**Costs in garnishee proceedings**

**16** The garnishee shall not be liable for the costs of the proceedings unless and in so far only as occasioned by setting up a defence which he knew or ought to have known was untenable; and the plaintiff or judgment creditor in garnishee proceedings shall be entitled to tax against the defendant or judgment debtor and add to the judgment the costs of such proceedings, unless the court or a judge otherwise orders and subject to this provision the cost of all parties shall be in the discretion of the court or judge.

1919-20, c.82, s.16; R.S.S. 1920, c.59, s.16.

**Execution stayed till money due**

**17** Execution shall issue to levy the money owing from a garnishee only when and so far as such money shall become fully due.

1919-20, c.82, s.17; R.S.S. 1920, c.59, s.17.

## ATTACHMENT OF WAGES OR SALARY

**Exemption from garnishment**

18(1) Subject to the other provisions contained in this section, no debt due or accruing due to a mechanic, workman, labourer, servant, clerk or employee, for or in respect of his wages or salary shall be liable to attachment unless such debt exceeds the sum of \$75 and then only to the extent of the excess.

(2) Where the debt due or accruing due is wages or salary for a period of less than one month, the part thereof exempt from attachment shall be that sum which bears the same proportion to \$75 as the period for which the wages or salary is due or accruing due bears to one month of four weeks.

(3) Nothing in this section contained shall apply where the debt sued for, or in respect of which the judgment was recovered, has been contracted for board and lodging.

(4) If the said amount of \$75 or any portion thereof is paid into court it shall not be necessary for the debtor to claim the same, but he shall be entitled to have it paid out to him at any time on application to the local registrar; but in the event of no such application being made until the expiration of two months after such payment in, or after judgment is recovered against the debtor whichever is later, the judgment creditor shall be entitled, on application to the court or a judge, to have the said sum or so much thereof as may be sufficient to satisfy his judgment paid out to him.

1919-20, c.82, s.18; R.S.S. 1920, c.59, s.18.

## ATTACHMENT IN A DISTRICT COURT

**Application to district court**

19 The provisions of this Act shall apply to proceedings in a district court with such changes in the title of the court, the style of the officer of the court and the forms of process, and with such other changes as are necessary to make the same applicable to such proceedings.

1919-20, c.82, s.19; R.S.S. 1920, c.59, s.19.

## SCHEDULE

## FORM A

*(Section 3)*

## GARNISHEE SUMMONS

In the King's Bench, Judicial District of \_\_\_\_\_  
 Between \_\_\_\_\_, of \_\_\_\_\_, plaintiff, and  
 \_\_\_\_\_, of \_\_\_\_\_, defendant, and \_\_\_\_\_, of  
 \_\_\_\_\_, garnishee.

To the above named garnishee.

You are hereby notified that a suit has been entered in this court in which the plaintiff claims of the defendant the sum of \_\_\_\_\_ as shown by his statement of claim filed in court a copy of which is hereto annexed (*or* You are hereby notified that the plaintiff has recovered a judgment in this court against the defendant for \_\_\_\_\_) and it is alleged on affidavit filed that you are indebted to the said defendant. And you are required within twenty days from the service hereof to notify the local registrar by statement in writing whether or not there is any debt due or accruing due from you to the defendant (*or* judgment debtor) and, if so, what debt and why you should not pay the same into court to the extent of the plaintiff's claim and costs.

*(Where the garnishee is claimed to be indebted to the defendant in respect of wages or salary add)*—The occupation of the defendant in the service of the garnishee is (*or* was) that of \_\_\_\_\_ at \_\_\_\_\_.

Issued at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_.

*I. J.*

*Local Registrar.*

(L.S.)

(To be indorsed same as a writ of summons.)

*Note.*—Take notice that in default of your so notifying the local registrar you are liable to have judgment entered up against you.