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## EXIT OF THE DOCTRINE OF SITUS.

A decision rendered by the Supreme Court of the United States on the 8th day of last May seems to mark the elimination of the doctrine of *situs* as a jurisdictional question in garnishment and attachment proceedings in the United States. Justices Harlan and Day dissented, and yet there is little danger that the question will again be opened; and in view of the conclusion reached, all lovers of plain, simple justice will rejoice that at last that disturber of peace and worker of iniquity in the commercial world has been deprived of its power to make the honest debtor pay twice while aiding the dishonest one to escape making any payment at all. Especially will the writers on the subject who have seen and lamented the evils of the doctrine rejoice in this happy conclusion of the whole matter. From this point of vantage it is interesting to review the rise and progress of this doctrine, and to contemplate the position in which we now find ourselves. The idea that a debt, a mere obligation to pay, is a thing fixed in space, capable of being seised and held in pawn with a certain and ascertainable location, may not be a modern invention; but it never received any judicial sanction except in the United States, so far as we are able to ascertain. The notion would seem to be a harmless one in itself; and most men would say it is a matter of no importance how it might be determined, any more than the question as to how many angels could stand on the point of a pin. The difficulty appears when the unfortunate debtor is summoned in two courts at the same time or successively to answer for the same debt, and each court refuses to recognize the proceedings in the other as any defense, and each compels him to pay to it in full, on the ground that the debt is there and not in the other court.

A number of questions entirely apart from the one as to whether a debt is a thing that can be located in space, in other words has a *situs*, have been involved in the judicial and extrajudicial discussions of this question; and it is more than probable that the doctrine had its inception in some of these. A few may be mentioned, and the most prominent one is this: Is it just to a stranger found transiently here and guilty of no wrong, to compel him to stay on expense and defend a lawsuit to

help some other stranger, or even resident, to collect a bad bill? Clearly this is a question of right and not of power. Yet it is believed the doctrine sprung from this situation. Again, what is a sufficient personal service on a foreign corporation to justify a personal judgment against it as garnishee? This is very often bound up with the discussions as to *situs*. One of the oldest doctrines of the English law was that the case must be tried by a jury of the vicinage; and in its beginning this principle was induced by the old jury system, by which the jury was composed of the witnesses of the fact, and based their finding on their own knowledge rather than on testimony given before them. Under such a system a debt would have to be sued where it was incurred or created. But when the jury came to pass on testimony rather than give judgment on their own knowledge, this objection was soon obviated by alleging a fictitious venue, a subterfuge which the courts sanctioned, in so much that they would not permit issue to be taken on the allegation.<sup>1</sup> Another objection sometimes raised with questions of *situs* is that the courts are supported by taxes on the locality, and that it is unjust to the people of the place to increase the expense by entertaining litigation between persons all of whom are foreigners and non-residents casually meeting there.

The doctrine that a debt has a locality for the purpose of garnishment finds negative support in the decision in *Andrews v. Clerke* (1689),<sup>2</sup> cited by Mr. Waples in his monograph on "Debtor and Creditor—Situs of Debt," and afterwards quoted in full in *C., R. I. & P. Ry. Co. v. Sturm* (1898),<sup>3</sup> in which the garnishee pleaded to the jurisdiction that the debt for which he was summoned arose outside of the jurisdiction of the court; and the court, holding the plea bad, said: "It was always the custom in London to attach debts upon bills of exchange and goldsmiths' notes, etc., if the goldsmith who gave the note on the person to whom the bill is directed liveth within the city, without any respect had to the place where the debt was contracted," which might seem to indicate that

<sup>1</sup> *Parker v. Crook*, 10 Modern, 255; *Mostyn v. Fabrigas*, 1 Cowper, 161, 1 Smith's Leading Cases, \*340.

<sup>2</sup> 1 Carthew, 25, 1 Shower, 10. The decision was by Holt, C. J.

<sup>3</sup> 174 U. S. 710, 19 Sup. Ct. Rep. 797, *Rood's Attach. Gar.*, etc., 71.

the residence of the garnishee is important. But while rummaging the old lumber pile for another purpose, I discovered a still older decision, proving that the residence of the garnishee was not deemed important. In *Mollam v. Hern* (1668),<sup>4</sup> the garnishee objected that the court had no jurisdiction of the debt because he resided out of the city. But the court said: "The debt follows the person, and it is therefore called a foreign attachment, because let the debt arise where it will, it is attachable if the debtor cometh, or the money be brought into London."<sup>5</sup>

As the notion found no support in the English courts, we must look for the origin of the doctrine in the American decisions. A case often cited in these discussions, and believed to be one of the first, if not, indeed, the very first in which any color of this doctrine is found, is the case of *Tingley v. Bateman* (1813),<sup>6</sup> in which all parties were residents of Rhode Island, trustee process (garnishment) was sued in Massachusetts, the officer returned that he could not find the principal defendant, and the court dismissed the action, saying: "The summoning of a trustee is like a process *in rem*. A chose in action is thereby arrested, and made to answer the debt of the principal. The person entitled by the contract or duty of the supposed trustee, is thus summoned by the arrest of this species of the effects. These are, however, to be considered for this purpose as local, and as remaining at the residence of the debtor or person intrusted for the principal; and his rights in this respect are not to be considered as following the person of the debtor to any place where he may be transiently found, to be there taken at the will of a third person, within a jurisdiction where neither the original creditor nor debtor

<sup>4</sup> 2 Kibble, 320.

<sup>5</sup> See also *Harrington v. Macmorris*, 1 Marshall, 333, 5 Taunton, 228, and note to *Tarbill's Case*, 1 Wm. Saunders, 67. *Frumpton v. Pettis* (in C. P. 1680), 3 Lev. 23, sometimes cited to the contrary, is not in point, and though clearly wrong, it merely holds that if the debt sued for by the principal creditor was contracted and payable out of London, the payment under the garnishment was no defense for the garnishee to the action by his own creditor. In *Huxham v. Smith* (1809), 2 Camp. 19, cited by Mr. Saunders, *ubi supra*, to show that the garnishee must be resident and the money payable in London, such an objection was made by counsel, but the payment under the garnishment was held a good defense.

<sup>6</sup> 10 Mass. 343.

resides. \* \* \* In the case at bar, the principal has not been made a party by any legal summons. \* \* \* As this defect of service appears in the proceedings, the court dismissed the action *ex officio*.<sup>7</sup> In later cases this decision was followed though the defendant, a nonresident, appears to have been served with process within the state.<sup>8</sup>

<sup>7</sup> Followed where the defendant was served by leaving an attested copy of the writ at his last place of abode, and by order of the trial court notice was personally served on the defendant in another state. *Nye v. Liscombe*, 21 Pick. (Mass.) 263; *Sawyer v. Thompson*, 24 N. H. 510; *Jones v. Comings*, 6 N. H. 497. Also, when the facts were the same except that the plaintiff resided in Rhode Island and the garnishee and defendant in New York. *Green v. Farmers and Citizens Bank*, 25 Conn. 452. Also, when the plaintiff is not stated to have been a nonresident, though the defendant and garnishee were, and the other facts were the same. *Lovejoy v. Albee*, 33 Me. 414, 54 Am. Dec. 630; *Central Trust Co. of New York v. Chattanooga R. & C. R. Co.*, 68 Fed. Rep. 685; *Pennsylvania R. Co. v. Rogers*, 52 W. Va. 450, 44 S. E. Rep. 300, 62 L. R. A. 178.

<sup>8</sup> *Smith v. Eaton*, 36 Me. 298, 58 Am. Dec. 746. In a suit by the judgment creditor against the garnishee on the garnishment judgment, the court said: "The position taken by the defendant is, that the court has no jurisdiction over the property of the principal defendant in the hands of the supposed trustee, though the process is properly served on both the principal defendant and the trustee, because the court, in proceedings of this kind, must have jurisdiction over the property alleged to be in the hands of the trustee as well as over the person of the trustee. \* \* \* The question here is, whether a person who has in his hands personal property of a debtor for which he might rightfully be charged as trustee in the courts of his domicile, can be charged as trustee of the same property in the courts of any other jurisdiction in which he and the debtor may be found, and duly served with process. The general principle is very clear that *debitum et contractus sunt nullius loci*,—debts and obligations are not local. They are incident to and accompany the person wherever he may be found, so that, as the general rule, a debtor, or contractor, or party answerable for personal property, is chargeable in any place where he is served with process. It is contended that the case of the trustee process is an exception to this rule; that it is not enough that a party is regularly served with process of the court within the jurisdiction where he is at the time. He cannot be charged as a trustee except in the jurisdiction where he resides. \* \* \* In general, mere choses in action are to be considered, with respect to a suit of this kind, as local, and not as following the person of the trustee to any place where he may be transiently found. This decision is placed on the ground that the courts have jurisdiction in trustee suits where the trustee is resident in another state, and that under proper circumstances the trustee may be charged, though it appears that all the parties are resident out of the state. \* \* \* If on disclosure it appears that the trustee had not, at the time of the service of the process, any property of the principal defendant in this state, and was not holden upon any debt or contract to be paid or discharged in

It will be observed that in these cases the question has been raised in the garnishment proceedings, not collaterally, but on these decisions as authority, individuals garnished and compelled to pay in a state where they did not reside,<sup>9</sup> and corporations paying under garnishments in any state other than the one of their incorporation,<sup>10</sup> or pleading prior subsisting garnishments or garnishment judgments against them in any other state,<sup>11</sup> have been compelled to pay again at the suit of their own creditor in disregard of such garnishment, on the ground that the garnishment was void for want of jurisdiction of the *res*.

It will be observed that in most of the cases thus far considered, the residence of the garnishee's creditor is not stated as a fact of much importance, and in many of them is not stated at all; but in another line of cases these have been cited as authority for a very different doctrine, that the residence of the creditor or the place of payment is the important fact, and the residence of the garnishee of no, or only incidental, consequence. In these cases corporations incorporated in other states, and there held under pending garnishments, or that have been compelled to pay under them, have been compelled to pay at the suit of their creditor in the state of his residence, in disregard of such garnishment, on the ground that the garnishment was void for want of jurisdiction of the *res*, which was held to be at the place of payment or at the residence of

this state, he will not be charged; not for want of jurisdiction of the case and person and subject-matter, but because the courts here hold that in such case the trustee is not chargeable, since their judgment will not affect the title to property out of the state and consequently the trustee could not be protected by it. Here there was no disclosure. The trustee was duly summoned, and had opportunity to show his case, but did not. He thereby admitted the charge of the writ, and was justly charged on his default. If he had nothing in his hands it would be no ground for relief from such judgment. It would not be a stronger case that he had property for which he ought not to be charged, and did not show it." *Lawrence v. Smith*, 45 N. H. 533, 86 Am. Dec. 183.

<sup>9</sup> *Ward v. Boyce*, 152 N. Y. 191, 46 N. E. Rep. 180, 36 L. R. A. 549; *Balk v. Harris*, 124 N. Car. 467, 32 S. E. Rep. 799, 45 L. R. A. 257, 70 Am. St. Rep. 606.

<sup>10</sup> *Allen v. United Cigar Stores Co.*, 80 N. Y. Supp. 401, 39 Misc. Rep. 500.

<sup>11</sup> *Douglass v. Phenix Ins. Co.*, 138 N. Y. 209, 33 N. E. Rep. 938, 20 L. R. A. 118, 34 Am. St. Rep. 448; *Strause v. Aetna Ins. Co.*, 126 N. Car. 223, 35 S. E. Rep. 481, 48 L. R. A. 452; *Renier v. Hurlbut*, 81 Wis. 24, 50 N. W. Rep. 783, 14 L. R. A. 562, 29 Am. St. Rep. 850.

the creditor.<sup>12</sup> On the other hand quite as many courts, if not more, have insisted from the first, that the debtor may be charged as garnishee wherever service can be and is made on him, regardless of the place of residence of either himself or his creditor, or the place of payment or contract. One of the cases often cited as a leading case of this class is *Embree v. Hanna* (1809),<sup>13</sup> de-

<sup>12</sup> *Louisville & N. R. Co. v. Nash*, 118 Ala. 477, 23 So. Rep. 825, 41 L. R. A. 331, 72 Am. St. Rep. 181, incorporated in both states; *Chicago, R. I. & P. Ry. Co. v. Sturm*, 58 Kan. 818, 58 Pac. Rep. 1100, affirming same case in 5 Kan. App. 427, 49 Pac. Rep. 337, and following *Missouri P. Ry. Co. v. Sharitt*, 43 Kan. 375, 23 Pac. Rep. 430, 8 L. R. A. 385, 19 Am. St. Rep. 143; *Illinois Cent. Ry. Co. v. Smith*, 70 Miss. 344, 19 L. R. A. 577, 35 Am. St. Rep. 651, 12 So. Rep. 461, followed in *Bucy v. Kansas City M. & B. Ry. Co.* (Miss. St. Ct. Rep., April, 1896, not officially reported), 22 So. Rep. 296; *American Central Ins. Co. v. Hettler*, 37 Neb. 849, 56 N. W. Rep. 111, 40 Am. St. Rep. 522, in which the point was also declared that the judgment in the other state was void because the debt was not payable there; *Osgood v. Maguire*, 61 N. Y. 524; *Continental Ins. Co. v. Chase* (Dec. 7, 1895, not officially reported, Tex. Civ. App.), 33 S. W. Rep. 711. In holding a payment under garnishment in another state no defense the Supreme Court of Alabama says: "It appears from the admission of counsel that defendant is a corporation incorporated under the laws of Alabama but running and operating its railroad from Chattanooga, Tenn., through Alabama, to Meridian, Miss., and that the claim of the plaintiff is for work done for the company in Alabama; he being at the time, and still, a resident of this state. The power of a state to submit foreign corporations to the same liabilities and duties imposed on like corporations of the state, including liability to be sued and served with process in the same manner, is not questioned. In *Banking Co. v. Carr*, 76 Ala. 388, it is said: 'It is well settled, however, that no action *in personam* can be maintained against a foreign corporation unless the contract sued on was made, or the injury complained of was suffered in the state in which the action was brought.' Garnishment is a species of proceedings *in rem*, in the nature of a sequestration of the debtor's effects. Unless the property is within the jurisdiction of the court issuing the garnishment so that it may be seized, jurisdiction, neither of the *res* nor the person, can be acquired. \* \* \* The case of *Railroad Co. v. Kennedy*, 83 Ala. 462, 3 So. Rep. 852, does not conflict with this view. In that case the garnished corporation, being incorporated in Tennessee, was domiciled in that state, and was as much within its jurisdiction for the purpose of being sued as a natural person, a resident of the state. The liability of the garnishee was not varied by the fact that the corporation operated its railroad in Alabama also, and that the debt was contracted in this state." *Alabama G. S. R. Co. v. Chumboy*, 92 Ala. 317, 9 So. Rep. 286.

<sup>13</sup> 5 Johns. 101. Chancellor Kent (then Chief Justice), who wrote the opinion in this case said: "Nothing can be more clearly just, than that a person who has been compelled, by a competent jurisdiction, to pay a debt once, should not be compelled to pay it over again. It has

ecided by the New York Supreme Court, per Kent, G. J. Hanna, resident in Baltimore, Md., was arrested in New York at the suit of Embree, resident in New York, and pleaded in abatement that he had been summoned as garnishee of Embree in a suit still pending against him in Baltimore, and this was held to be a good defense to the action. It is true that in this case the garnishee resided in the place where he was summoned, but this point has not been considered important in all the subsequent cases, and there are a great many in which the same doctrine has been declared.

With the courts thus clashing against each other, and making the tormented garnishee pay at both ends, the conflict became vexed, sometimes acrimonious, and unfortunately frequent. Business men, and especially cor-

accordingly, been a settled and acknowledged principle, in the English courts, that where a debt has been recovered of the debtor under this process of foreign attachment, in any English Colony, or in these United States, the recovery is a protection, in England, to the garnishee against his original creditor, and he may plead it in bar. \* \* \* The creditor ought not to lose his debt when he has had no opportunity to defend himself, and the debtor ought not to pay a second time a debt which he has been obliged to pay once, under the process of a competent court; but the case of the creditor would not be so hopeless as that of the debtor, for he might probably resort to the person who sued out the attachment, and call upon him to make good his demand, or to refund the money, which the law might well presume he had received for the use of the creditor of the garnishee. This was the principle of the decision in *Phillips v. Hunter*, 2 H. Bl. 402. Admitting the cases to stand equal in equity (and the claim of the debtor to protection who has been obliged to pay once, must be admitted to be at least equal in equity), the interest of the defendant ought to be preferred. If then the defendant would have been protected under a recovery had by virtue of the attachment, and could have pleaded such recovery in bar, the same principle would support a plea in abatement of an attachment pending, and commenced prior to the present suit. The attachment of the debt in the hands of the defendant, fixed it there, in favor of the attaching creditors; the defendant could not afterwards lawfully pay it over to the plaintiff. The attaching creditors acquired a lien upon the debt, binding upon the defendant; and which the courts of all other governments, if they recognized such proceedings at all, cannot fail to regard. \* \* \* If we were to disallow a plea in abatement of the pending attachment, the defendant would be left without protection and be obliged to pay the money twice; for we may reasonably presume that if the priority of the attachment in Maryland be ascertained, the courts in that state would not suffer that proceeding to be defeated, by the subsequent act of the defendant going abroad, and subjecting himself to a suit and recovery here." *Embree v. Hanna*, 5 Johns. 101.

porations engaged in interstate commerce, on whom the burden fell most heavily, began looking anxiously for some escape. During this period many decisions were recorded containing extended and very learned discussions of the whole subject. Pre-eminent amongst these may be mentioned *National Fire Ins. Co. v. Chambers*,<sup>14</sup> and *Missouri Pac. Ry. Co. v. Sharitt*.<sup>15</sup> The first relief came in 1898, on the publication of the decision of the Supreme Court of the United States in the case of *Chicago, R. I. & P. Ry. Co. v. Sturm*.<sup>16</sup> That court reversed the decision of the Supreme Court of Kansas, in which a man working and living in Kansas, where he was hired and usually paid, and where as a householder or head of a family he was entitled to exemption of his wages from garnishment, was given judgment for the amount due him, although the garnishee defended on the ground that it had been summoned and judgment rendered against it as his garnishee in a court of Iowa, where it was incorporated. This case established that if a natural person or corporation is made garnishee in the state of his or its domicile, the provision of the United States constitution requiring that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state, requires that such garnishment shall be recognized as a defense in every other state, to any action against the garnishee by his creditor, regardless of where such creditor resides, where the contract was made, where the money was payable or earned, or whether it was or was not exempt from garnishment, etc., by the law of the creditor's domicile or elsewhere. At first, many hailed this decision as the solution of the whole difficulty; but very soon it was discovered that the end was not yet. Immediately cases arose in which the garnishee was a corporation of some state or sovereignty other than that in which it was made a garnishee; and it was argued and held that the decision in the *Sturm* case extended only to cases in which the garnishee was in-

<sup>14</sup> 53 N. J. Eq. 468, 32 Atl. Rep. 663; *Dwyer's Cases on International Law*.

<sup>15</sup> 43 Kan. 375, 23 Pac. Rep. 430, 8 L. R. A. 385, 19 Am. St. Rep. 143, in which the court was divided and three judges filed opinions.

<sup>16</sup> 174 U. S. 710, 43 L. Ed. 1144, 19 Sup. Ct. Rep. 797; *Rood's Attach. Gar. etc.* 71.

corporated in the state where garnished,<sup>17</sup> or if the garnishee was a natural person only to garnishments in the state where he resided, and, therefore, that garnishment elsewhere was without jurisdiction, and no defense to a subsequent suit by the garnishee's own creditor.<sup>18</sup> Now this contention has been settled. It has just been held in a case in the Supreme Court of the United States that the decision in the *Sturm* case is not to be given the limited construction contended for. In *Harris v. Balk*,<sup>19</sup> coming from the Supreme Court of North Carolina, both parties resided in that state and Balk sued Harris for money loaned on verbal promise to pay. Harris pleaded in defense that just a few days before the suit was begun, while Harris was temporarily in Baltimore, Md., he was summoned as garnishee of Balk, returned without making defense, and on the day this suit was commenced made affidavit of indebtedness to Balk, on which his counsel in Baltimore consented to judgment being rendered against him, on such garnishment, which he afterwards paid. The North Carolina courts held that this garnishment in Baltimore was without jurisdiction, because the garnishee was a non-resident, he and his creditor both residing in North Carolina, where the debt was contracted and payable. This decision is now reversed, so that now it is settled that it is not material that the principal debtor and garnishee are both nonresidents, the debt contracted and payable elsewhere, and in a state by the laws of which it would be exempt from garnishment. As a matter of comity, no doubt, no state would entertain a suit prosecuted to evade the exemption laws of another state, if the fact is discovered; but that is a matter for the court to decide and not a matter of jurisdiction, which cannot be acquired by holding it to exist.

In the course of his opinion, Mr. Justice Peckham, speaking for the majority of the court, says: "We do not see the materiality of the expression '*situs* of the debt,' when used in connection with attachment proceedings. If by *situs* is meant the place

of the creation of the debt, that fact is immaterial. If it be meant that the obligation to pay the debt can only be enforced at the place thus fixed, we think it plainly untrue. The obligation of the debtor to pay his debt clings to him and accompanies him wherever he goes. He is as much bound to pay his debt in a foreign state when therein sued upon his obligation by his creditor, as he was in the state where the debt was contracted. We speak of ordinary debts, such as the one in this case. It would be no defense to such a suit for the debtor to plead that he was only in the foreign state casually or temporarily. His obligation to pay would be the same whether he was there in that way or to remain. It is nothing but the obligation to pay which is garnished or attached. This obligation can be enforced by the courts of the foreign state after personal service of process therein, just as well as by the courts of the domicile of the debtor."

In parts of the opinion the court may seem to make the question of jurisdiction to depend on the right of the garnishee's creditor to sue him there. But it is believed that when the question comes to test the court should and will hold that the jurisdiction depends on sufficient service on the garnishee in a state and under a law authorizing garnishment proceedings and in a court authorized by such law to entertain garnishment suits. In other words, if a garnishee is summoned on a demand and judgment rendered against him when he ought to have been discharged, that judgment is merely erroneous, and is no more void for want of jurisdiction than if a similar judgment had been rendered against him at the suit of his own creditor. In a word, the whole question on a garnishment set up as a defense, so far as jurisdiction is concerned, will be this: 1. Had the court that charged the garnishee acquired jurisdiction over him, so it could render a judgment *in personam* against him? 2. Was there an law of the state authorizing garnishment proceedings? As to whether that law was complied with and extended to the case in hand, it seems to me, are questions exclusively for the court trying the case to decide, and the correctness of its conclusions on these questions ought not to be reviewed collaterally.<sup>20</sup>

<sup>17</sup> *National Bank v. Furtick* (Del.), 2 Marvel, 35, 42 Atl. Rep. 479, 69 Am. St. Rep. 99, 44 L. R. A. 215.

<sup>18</sup> *Balk v. Harris*, 122 N. Car. 64, 45 L. R. A. 257, 30 S. E. Rep. 318, 124 N. Car. 467, 45 L. R. A. 260, 70 Am. St. Rep. 606, 32 S. E. Rep. 799, 130 N. Car. 381, 41 S. E. Rep. 940, 132 N. Car. 10, 43 S. E. Rep. 477.

<sup>19</sup> U. S. S. C. (May 8, 1905), 25 Sup. Ct. Rep. 625.

<sup>20</sup> These views find sanction in the learned opinion of the court in *Nat. Fire Ins. Co. v. Chambers*, 53 N. J. Eq. 468, 32 Atl. Rep. 633.

In the conclusion of the opinion the court holds that the garnishee summoned and charged in a proceeding in which his creditor is not served or notified, can take no advantage of such garnishment and payment as a defense to the action of his own creditor, unless he notified his creditor so that he had opportunity to defend it. But in this case it was held that the plea made was sufficient notice, though made after judgment by confession had been taken against the garnishee, since the law under which the garnishment was had, permitted the principal debtor to defend and have restitution at any time within a year after judgment, if he could show his right, and required a bond of the garnishing creditor to secure the defendant's rights.

It is believed that this decision is eminently sound and wise, will serve as a protection against repetition of injustices that have often been done, and is a fit cause for general rejoicing.

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