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Acquiring Jurisdiction in Garnishment Proceedings

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ACQUIRING JURISDICTION IN GARNISHMENT PROCEEDINGS.—Garnishment is a proceeding provided by statutes found in every state, for the purpose of laying hold of something belonging to a defendant or judgment debtor but actually in the hands of someone else, and appropriating it to pay the debt due from the defendant or judgment debtor. If the proceeding is instituted ancillary to a pending suit, and before judgment, it is a species of attachment. If it is issued ancillary to a judgment already recovered it is a species of execution. If the third person summoned as garnishee is merely bailee of property belonging to the judgment debtor or defendant the garnishment differs from an actual levy into the hands of the sheriff under an attachment or execution only in the fact that the actual custody and possession remain with the garnishee instead of passing to the hands of the sheriff. If the garnishee has nothing in his hands belonging to the principal defendant and is only indebted to him, the garnishment merely stops payment, creates a lien on the sum due, and eventually causes the garnishee to pay into court for the benefit of the plaintiff instead of paying to the defendant according to his original liability. To repeat, it is in substance a seizure of the principal defendant's goods or choses in all cases, and appropriation of them to satisfaction of his obligations.

Statement of these aphorisms is prompted by the decision of the Supreme Court of Michigan in *Katt* v. *Swartz* (1917), 165 N. W. 717, sustaining a plea of payment into court in garnishment as an absolute bar to suit against the garnishee by his creditor, and at the same time saying that the judgment against the principal debtor (the garnishee's creditor) in the proceedings to which the garnishment was ancillary was void because the summons to the debtor in that proceeding was issued and served only four days before the return day instead of from six to twelve days before, as required by the statute.

The statement of the court that the judgment against the principal defendant was void was not necessary to the decision. The question as to the

effect of that adjudication as a judgment *in personam* was not before the court. The meaning of the court may fairly be interpreted to be this: admitting for the sake of argument that the judgment against the principal debtor is void as a judgment *in personam,* it was sufficient to give the court jurisdiction *in rem* to the extent that the judgment against the garnishee and his payment under it divested the principal defendant of his right of action against the garnishee. If that was not the meaning of the court, it certainly is the effect of the judgment; for, as stated in the opening paragraph, garnishment is essentially and unavoidably *in rem* as to the principal defendant's property.

If the owner of anything is deprived of it by a judicial proceeding to which he is in no way a party, he is not bound by the decision. If he has not had his day in court the decision is either *res inter alios acta* or it is *coram non judice.* A corollary of this proposition, admitted by all courts, and often declared and applied by the Supreme Court of Michigan, is that if the proceeding against the principal defendant is void, payment by the garnishee of a judgment rendered against him is no protection to him against an action by the principal defendant. *Laidlaw* v. *Morrow,* 44 Mich. 547; *Coe* v. *Hinkley,* 109 Mich. 608; *Moore* v. *Speed,* 55 Mich. 84.

Therefore, interpreting the instant case in the only way in which it is possible to interpret it, it decided that failure to comply with the statutory form (in this case relating to the notice to the principal defendant) does not render the statutory proceeding *in rem* void, so as to expose it to collateral attack. Recognizing this fact, we impulsively rise to applause and acclamation, as we see the Supreme Court of Michigan turning away from the heresy promulgated in this state away back in 1847, in the case of *Greenvault* v. *Farmers and Mechanics' Bank,* 2 Doug. 498, and wheeling into line with the increasing procession following the lead of the Supreme Court of the United States in the case of *Voorhees* v. *The Bank of the United States,* 10 Peters 449; *Cooper* v. *Reynolds,* 77 U. S. (10 Wall.) 308; etc.

The Supreme Court of Michigan was the original sinner, the first state to go astray. She has persisted in her error started in 2 Doug. 498 for many years, and has misled others. The Supreme Court of Nebraska followed her lead for several years, but finally in *Darnell* v. *Mack* (1896), 46 Neb. 740, discovered her error and turned to the right. For review of other cases see article in 1 MICH. L. REV. 645, on "Collateral Attacks Based on Irregularities". Let us hope that the instant case marks a definite change of policy by our Supreme Court. The principal debtor in the instant case was personally served with summons in the same town in which the suit in garnishment was tried, four days before the trial. He had ample opportunity to appear and make defense if he had any on the merits or cared to raise objection to the jurisdiction; or, as suggested by Mr. Justice STEERE in his opinion, he might have appealed or sued *certiorari.* He did none of these things, but preferred collateral attack. There is no suggestion or suspicion that the length of the notice to him caused him any inconvenience or in any way embarrassed his defense. On what basis should he be allowed to make collateral attack?

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