

NEW JERSEY
Court of Errors and Appeals.

ANDREW M. BAILEY,

Defendant in Error.

v.

THE PENNSYLVANIA RAIL-
ROAD COMPANY,

Plaintiff in Error.

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JOSEPH NAYLOR,

Defendant in Error.

v.

THE PENNSYLVANIA RAIL-
ROAD COMPANY,

Plaintiff in Error.

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BRIEF FOR DEFENDANTS IN ERROR.

The plaintiff in error insisted in each case "that it was entitled to withhold for its protection against said attachment the wages of defendant in error, or so much thereof as should be sufficient for that purpose." The Court overruled this defence, and the plaintiff in error insists that full faith and credit have not been accorded to the foreign attachment. This, then, is the legal question: Whether the pendency of the foreign attachments afforded a defence

which barred action. It will be observed that an attachment of its own force does not discharge the debt owed by defendant in error to the plaintiff in attachment. The liability of the former remains until it is paid either by himself or the garnishee.

I. NO DENIAL OF FULL FAITH AND CREDIT TO THE GARNISHMENT IN WEST VIRGINIA.

10 No motion to stay the execution was made below, hence it must be insisted that the refusal to rule that the pendency of the foreign attachments barred *pro tanto* the defendants in error from their action was a denial of full faith and credit to the proceeding in West Virginia. This being a constitutional question, the decision of the United States Supreme Court upon it is binding.

Mr. Justice McKenna in *Chicago, Rock Island, &c., v. Sturn*, 174 U. S., 710, at 713, says: "How proceedings in garnishment may be availed of on defense—whether in abatement or bar of the suit on the debt attached or for a 20 continuancy of it or suspension of execution—the practice is not uniform. But it is obvious and necessary that such proceedings should be allowed as a defence in some way." The ruling of the District Court did not violate the constitution of the United States,

II. Our State practice has been to stay proceedings when the debt has been garnisheed. *Hixon v. Schooley*, 2 Dutcher, 461, so rules if foreign proceedings be valid. *Traflet v. Empire Life Insurance Co.*, 387; *Fairchild v. Fairchild*, 8 Dick., 678; *Wallace v. Liber*, 38 Vr., 36. 30

The defendants in error have the right to contest these proceedings upon the same grounds as they could any other judgment, viz., lack of jurisdiction, fraud, &c.

Magowan v. Magowan, 12 Dick. 322; *Herbert v. Herbert*, 4 Dick., 565.

The judgment of our Court upon the question would be binding upon plaintiff in attachment.

Lancashire Ins. Co. v. Corbelts, 165 Ill., 592, at 599 and 560.

40 *Va. Ins. Co. v. N. Y. Ins. Co.*, 95 Va., 515.

Traflet v. Empire Ins. Co., 35 Vr., 387. (3rd syllabus.)

Washington Gas Co. v. Dist. of Columbia. (3rd syllabus.)

The equitable powers possessed by our law courts over its judgments to protect the rights of third parties would afford all parties opportunity to have their day in court. The effect of a valid attachment of a debt is to assign the debt to plaintiff in attachment; therefore, the exercise of this power would be within decided cases.

Marlin v. Franklin Ins. Co., 9 Vr. 140 at 145.

Conover v. Ruskman, 6 Stew. 303 at 308.

Elvin v. Del. & At. Tel. Co., 34 Vr. 243.

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II. THE ATTACHMENT PROCEEDINGS IN WEST VIRGINIA ARE NULL AND VOID.

The plaintiff in error was not incorporated there, and was not a resident of that state and could not be garnisheed there.

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The West Virginia Court of Appeals in March last (Penn. R'y Co. v. Rogers, 44 S. E. 300,) held that the Pennsylvania Railroad Co. was not liable to garnishment in West Virginia on the grounds that it had no residence in West Virginia, and the debt, which was the wages of one of its employes earned in Pennsylvania, was not within the jurisdiction of the West Virginia Court. The decision is elaborate and sustains the defendants in error that these proceedings are *coram non judice*.

In the Sturm case, 174 U. S., 710 at 716, the opinion emphasizes the point that the garnisheed suit was begun in Iowa against "An Iowa corporation, and a resident of the State."

30

Judge Taft, in writing the opinion of the United States Circuit Court of Appeals, says: "We are of the opinion that a non-resident creditor can not have his property in the debt seized in a state to which the debtor may resort, not for the purpose of residence, but for the purpose of doing business through agents, when the claim arose on a contract not to be performed there, and the debtor does not reside therein." Reiners v. Seatco M'fg Co., 37 U. S. Appeals, 426 at 430. This distinguished judge discusses the

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case principally from an international and constitutional standpoint.

In these cases at bar, the contracts or debt arose in New Jersey, and payments of wages were and would legally be made at the home of the creditor, and therefore, the *res* were not attachable in West Virginia.

The facts in the case vary from the Chambers case (8 Dick., 468), and have all the characteristics of the case of Douglas v. Phoenix Ins. Co., 138 N. Y., 209, from which
 10 Vice Chancellor Pitney distinguishes it at page 490. See also the interesting opinion of House of Lords in Mayor, &c., v. Cox., 2 House of Lords L. R. at 271, &c.

The plaintiff in error failed to show that the attachments were valid.

The record of a justice's court of a sister state is not evidence of the jurisdiction of that court.

Godfrey v. Meyers, 3 Zab., 193, and also Greenleaf on Evidence cited therein.

Our own justice court did not have jurisdiction over
 20 foreign corporations.

Wheeler & Wilson M'fg Co. v. Carty, 24 Vr., 336.

In the Bailey case the record shows process was served upon agent. In the absence of statutes such service would be invalid.

Conn. Ins. Co. v. Spratley, 172 U. S., 602 at 610.

Moulin v. Ins. Co., 4 Zab., 222 at 244.

There is no evidence that the West Virginia Court had jurisdiction over either the *res* or the plaintiff in error.

The attachments are the result of a scheme to circumvent the exemption laws of this State, and our courts
 30 should exact strict proof of their legality. Margerum v. Moon, 18 Dick., 586., Minzheimer v. Doolittle, 15 Dick., 394.

Respectfully submitted by

HARRY C. VALENTINE,

Attorney for Defendants in Error.

AARON V. DAWES,

Of Counsel

New Jersey Court of Errors and Appeals.

ANDREW M. BAILEY (Plaintiff),
Defendant in Error,

vs.

THE PENNSYLVANIA RAILROAD
COMPANY (Defendant),
Plaintiff in Error.

On Error to
Supreme Court.

JOSEPH NAYLOR (Plaintiff),
Defendant in Error,

vs.

THE PENNSYLVANIA RAILROAD
COMPANY (Defendant),
Plaintiff in Error.

On Error to
Supreme Court.

BRIEF FOR PLAINTIFF IN ERROR.

The above entitled cases may be argued on the same brief, the questions involved being practically the same.

In each case the plaintiff, a resident of New Jersey, was an employee of the Pennsylvania Railroad Company, defendant, and rendered services in such employment in the State of New Jersey. In each case attach-

ment proceedings were taken before a Justice of the Peace in West Virginia, by a person claiming to be a creditor of the plaintiffs in these cases respectively, against such plaintiffs, and against the Pennsylvania Railroad Company as garnishee. Such attachments had been regularly served upon the said garnishee in West Virginia, thereby attaching the wages due plaintiffs as above stated, prior to the commencement of these actions in the District Court of the City of Trenton by said employees to recover from their employer the amount of their wages.

The Railroad Company, upon service of said attachments notified its employees the plaintiffs in the present cases, of such attachments, but in neither case did the present plaintiffs appear or defend the suits in West Virginia. In the case of Bailey, the Justice of the Peace had rendered judgment in attachment against the defendant prior to the commencement of suit in the District Court.

In the Naylor case judgment had not yet been entered at the time of the trial in the District Court, but the attachment was still pending at that time. These facts were duly made to appear to the District Court and were there insisted upon on behalf of the Railroad Company; it being claimed that said Company was entitled to withhold for its protection against said attachments, the wages earned as aforesaid by the said plaintiff, or so much thereof as should be required for that purpose. The District Court overruled the defence and rendered judgment in favor of the plaintiffs in each case, for the full amount of the wages sued for; from which judgment the Pennsylvania Railroad Company appealed under the Act P. L. 1902, page 565. The Supreme Court on such appeals affirmed the judgment of the District Court.

I.

The Indebtedness of the Railroad Company to the Plaintiffs was Subject to Attachment in West Virginia Notwithstanding that the Wages were Earned in New Jersey and the Plaintiffs were Residents of New Jersey.

Jurisdiction to fasten choses in action by garnishee process depends upon the ability to serve process of garnishment upon the debtor of the absent defendant within the territorial jurisdiction of the Court. *National Fire Insurance Co. v. Chambers*, 8 Dick. 568; *Lancashire Insurance Co. v. Corbetts*, 165 Ill. 592; *Railroad v. Barnhill*, 91 Tenn. 395; *Rood on Garnishment*, Sec. 245; *Wyeth Hardware Co. v. Lang*, 127 Missouri 242; *Neufelder v. German Insurance Co.* 6 Washington 336; 8 *Am. & Eng. Encyclopedia of Law* 1131; *Chicago R. I. & P. Ry. Co. v. Sturm*, 174 U. S. 710; *Burlington, &c., Railroad Co. v. Thompson*, 31 Kansas 180; *Mahany v. Kephart*, 15 W. Va. 609; *Stevens v. Brown*, 20 W. Va. 450; *Morgan v. Neville*, 74 Pa. St. 52; *Bolton v. P. R. R. Co.* 88 Pa. St. 261.

In this case service was made upon the General Agent of the Railroad Company at its principal office in West Virginia.

The fact that the debt attached was due for services rendered in this State and was exempt by the law of this State was no defence to the garnishee in the suit in West Virginia, nor is it any reason for refusing protection to this suit.

Chicago R. I. & Pac. Ry. Co. v. Sturm, 174 U. S. 710.

Burlington, &c., R. R. Co. v. Thompson, 31 Kansas 180.

Stevens v. Brown, 20 W. Va. 450.

II.

The Pendency of the Garnishment Proceedings was Good Defence to this suit.

In the opinion of the Supreme Court by Justice Garrison, 54 Atlantic, 248, it is said with reference to this defence: "It could not be pleaded in bar for it neither denies the contract nor shows performance. It could not be pleaded in abatement because it does not tend to end the suit but at most only to retard its progress."

The defence that the plaintiff had assigned the claim would neither deny the contract nor show performance; but assuredly it would be a bar to the suit. The impounding of the claim by due process of law is analogous to an assignment and terminates or suspends the right of the creditor to receive the money. It cannot be said that Bailey and Naylor are entitled to demand payment of their wages while another party claiming under them had a legal lien upon the chose in action.

It is not true that such a defence is ground only for retarding or staying the suit. The gist of it is that at the time the plaintiff brought his suit he was not entitled to recover. This being so, he cannot acquire the right to maintain that suit by the subsequent termination of the garnishment proceedings, although after their term intaion he will be in a position to bring another suit. Merely to stay the suit under such circumstances would be like staying a suit prematurely brought and permitting it to proceed after the cause of action had become ripe.

That garnishment of the claim in another State is ground of abatement of a suit subsequently brought by the defendant in the attachment against the garnishee, is held in *Embree v. Hanna*, 5 *Johnson*, 101, where Chief Justice Kent, after saying that it is a settled and acknowledged principle in the English courts that that where a debt has been recovered of the debtor under process of foreign attachment the recovery is a

protection to the garnishee and he may plead it in bar, proceeds as follows:

"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 will 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 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 recognize such proceedings at all, cannot fail to regard. *Qui prior est tempore portior est in jure*. In *Brook v. Smith* (1 Salk. 280), Lord Holt held that a foreign attachment, before writ purchased in the suit, was pleadable in abatement."

In *Wallace v. McConnell*, 13 Peters 136, 151, the Supreme Court of the United States used almost exactly the same language, but held that garnishment was not a defence in that case because it was subsequent to the commencement of the suit in which it was set up.

In *Hixon v. Schooley*, 2 Dutcher, 461, our own Supreme Court held that the prior attachment of the claim in another State would be a good plea in abatement in an action brought by the defendant in attachment against the garnishee in this State, citing *Embree v. Hanna* and the English cases relied upon by Chief Justice Kent in that case.

Nor is the objection addressed to the discretion of the trial court as upon a motion to stay where there is an ordinary suit pending in a foreign State, which was the case of *Kerr v. Willetts*, 19 Vroom, 78.

It happily is not left to the discretion of any Justice of the Peace before whom either a corporation or a natural person may be sued, to say whether the defendant shall be compelled to pay the debt twice, or shall be protected by a previous seizure of the debt by due process of law in another jurisdiction. The protection

followed in American
Bk. v. Rollins 99 Mass 313.

Drake Attach. (7 Ed) § 700

2 Wade " § 500

Staples " (2 Ed) § 957

do also Whipple v Robbins

97 Mass. 107.

of the defendant under such circumstances is guaranteed by the Constitution of the United States and the Act of Congress which require that full faith and credit shall be given to judicial proceedings in another State.

In *Chicago R. I. & P. Ry. Co. v. Sturm*, 174 U. S. 710, the Supreme Court of the United States reversed a judgment of the Court of Appeals of the State of Kansas, which had affirmed the judgment of an inferior Court of that State and refused to recognize as a defence a garnishment of the claim in attachment proceedings in the State of Iowa. The case was substantially the same in its facts as the present case and the ground of the reversal by the Supreme Court of the United States was that the Kansas Courts had not given due faith and credit to the attachment proceedings in the State of Iowa.

The judgments in each of these cases, both in the Supreme Court and in the District Court, should therefore be reversed with costs.

CHARLES E. GUMMERE

AND

ALAN H. STRONG,

Of Counsel with Plaintiff in Error.

THE HISTORY OF THE UNITED STATES

OF THE UNITED STATES OF AMERICA
FROM 1789 TO 1861
BY
JAMES M. SMITH
VOLUME I
THE FOUNDING OF THE NATION
1789-1800

THE UNIVERSITY OF CHICAGO PRESS
CHICAGO, ILLINOIS

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NEW JERSEY
Court of Errors and Appeals

ANDREW M. BAILEY, <i>Defendant in Error,</i> <i>vs.</i> THE PENNSYLVANIA RAILROAD COMPANY, <i>Plaintiff in Error.</i>	} On Error to Supreme Court.
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WRIT OF ERROR.

(Filed March 23, 1903.)

(Returnable April 1, 1903.)

The State of New Jersey to the Chief Justice and
[L. s.] other Justices of our Supreme Court of
Judicature, Greeting:

Forasmuch as in the record and proceedings, and also
in the giving of judgment in a certain plaint which was
in our Supreme Court of Judicature before you, between
The Pennsylvania Railroad Company, appellant and 10
defendant, and Andrew M. Bailey, respondent and plain-
tiff, in an appeal from the District Court of the city of
Trenton in an action upon contract, manifest error hath
intervened, to the great damage of the said The Penn-
sylvania Railroad Company, as it is said; we being
willing that the error, if any there be, should, in due

manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given, then you, distinctly and openly, send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the first day of April next, together with this writ, that the record and proceedings aforesaid being in-
 10 spected, we may cause to be further done thereupon, for the correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be done.

Witness our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the thirteenth day of March, in the year nineteen hundred and three.

CHAS. E. GUMMERE,
Attorney.

S. D. DICKINSON,
Clerk.

20

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE, *C. J.* [L. S.]

NEW JERSEY SUPREME COURT.

February Term, 1903.

ANDREW M. BAILEY,	}	On Appeal. Affirmance.
<i>Appellee,</i>		
<i>vs.</i>		
THE PENNSYLVANIA RAILROAD COMPANY,		
<i>Appellant.</i>		

COPY OF RULE.

An appeal having been taken in the above-stated cause from the judgment of the District Court of the city of Trenton rendered therein, and the said matter coming on to be heard before the Court at the November Term, 1902, thereof, and the Court having heard the argument of counsel and considered the same;

It is ordered that the judgment of the District Court of the city of Trenton be in all things affirmed with costs.

Entered March 10th, 1903.

On motion of

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H. C. VALENTINE,
Attorney.

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of a rule made by said Court in the above-stated cause and entered in the minutes thereof.

[L. s.] In testimony whereof I have set my hand and the seal of said Court, at Trenton, this 16th day of March, A. D. nineteen hundred 30 and three.

WM. RIKER, JR.,
Clerk.

NEW JERSEY SUPREME COURT.

ANDREW M. BAILEY	} On Appeal from	
vs.		} Trenton District
THE PENNSYLVANIA RAILROAD COMPANY.		

STATE OF THE CASE.

(Filed November 21, 1902.)

This is an appeal by the Pennsylvania Railroad Company from a judgment rendered against it in favor
10 of Andrew M. Bailey in the District Court of the city of Trenton, September 18th, 1902, for sixty-nine dollars and fifteen cents damages and six dollars and eighty-six cents costs, in an action upon contract.

Said action was brought July 11th, 1902, by said Bailey, he being a resident of the city of Trenton and having a family residing in this State, to recover for wages earned by him in the State of New Jersey as an employee of said railroad company during the months
20 of May and June, 1902.

It was admitted upon the trial on the part of the defendant that the plaintiff had earned in such employment during said months, wages to the amount for which judgment was rendered, and that the same had not been paid to the plaintiff.

On behalf of the defendant company the following record of proceedings had before Gibson L. Caldwell, Justice of the Peace for Ohio county, State of West Virginia, wherein G. O. Smith is plaintiff, and A. M. Bailey and Pennsylvania Railroad Company, garnishee,
30 are defendants; which record so offered was duly exemplified under the act of Congress; to which record objection was made by the plaintiff an exception allowed, and the same admitted as evidence on the part of said defendant corporation:

May 28th, 1902.

I hereby assign and sell all my right and title to the foregoing account of \$35.28 to G. O. Smith, for a valuable consideration; and that this account is correct, just and unpaid, and that I have demanded payment, and that there is no set-off or counter claim against it, and that the debt was contracted by the debtor.

S. B. SNEATH.

Sworn and subscribed to before me, at Trenton,
county of Mercer and State of New Jersey. 10

MICHAEL J. SOLAN,
Notary Public.

(Copy.)
GIBSON L. CALDWELL, *J. P.*

PURCHASE BLANK.

Will Purchase Accounts, Notes, Judgments, Etc.,
Against Employees of the
Baltimore & Ohio R. R. Pittsburg, Ft. Wayne &
Pitts., Cin., Chicago & St. Chicago.
Louis R'y. And Roads operated by Pa.
Wheeling & Lake Erie. Co. 20
Cleveland, Lorain & Also Express and Telegraph
Wheeling R'y. Cos.
Cleveland and Pittsburg. American Tin and Nat.
Tube Cos.
The Penna Railroad.

Employed by what Company? Penna. R. R. Co.
His occupation with Company? Special Officer at
What Division, Mill or shop employed? Coalport, Bel-
videre Div.

Is he employed at the present time? Yes. 30
At what salary?

TRENTON, N. J., May 27th, 1902.

M. A. M. Bailey,
194 Monmouth St., Trenton, N. J.
To S. B. Sneath,
292 N. Clinton Ave., Trenton, N. J.

No.....

3// 1899 Bal. on account..... \$35.28
(Copy)

GIBSON L. CALDWELL, J. P.

10 Mail this blank to
The Delaware Mercantile Co.,
Harrisburg, Pa.

Declaration—Justice's.

G. O. SMITH,

Plaintiff,

vs.

A. M. BAILEY & PENNSYLVANIA
RAILROAD COMPANY, GAR-
NISHEE,

Defendant.

} In a civil action be-
fore Gibson L.
Caldwell, a Jus-
tice of the Peace
for Clay District
Ohio County, W.
Va.

20

Plaintiff claims the sum of Thirty-five & 28/xx dol-
lars (\$35.28/xx), with interest from the 11th day of
March 1899; due for balance on account.....
as per account filed herewith.

.....*Plaintiff.*

by.....*Attorney.*

(Copy).

GIBSON L. CALDWELL, J. P.

Justice's Summons.

30 State of West Virginia, Ohio County, to-wit:
To D. G. Brown, Constable of said County:

You are hereby commanded in the name of the State
of West Virginia, to summon A. M. Bailey to appear
before me, Gibson L. Caldwell, a Justice of the Peace
of said County, at my office in the District of Clay, in
said County, on the 9th day of June, 1902, at 10 o'clock

A. M., to answer the complaint of G. O. Smith in a civil action for the recovery of money due on contract in which the plaintiff will claim judgment for \$35.28 exclusive of interest and costs.

Given under my hand, this 3rd day of June, 1902.

GIBSON L. CALDWELL,
Justice of the Peace.

(Copy)

GIBSON L. CALDWELL, *J. P.*

Upon which is the following endorsement: 10

G. O. Smith	}	Summons, Rec'd. 3rd June 1902 at 1.30 o'clock P. M.
vs.		
A. M. Bailey.		

D. G. BROWN,
Constable.

This defendant is not a resident of Ohio County, West Virginia, nor has he served with this process this 9th day of June 1902.

D. G. BROWN,
Constable. 20

Attachment Affidavit—Justice's.

G. O. SMITH	}	An action before Gibson L. Cald- well, a Justice of the Peace for Ohio County, West Virginia.
vs.		
A. M. BAILEY & PENNSYLVANIA		
RAILROAD COMPANY, GAR- NISHEE.		

On his solemn oath G. O. Smith says he is the plaintiff in this action; that the claim of the said plaintiff against the said defendant is for balance on account that the said claim is just and that the said plaintiff ought to recover thereon from the 11th day of March, 1899, thirty five dollars and twenty eight cents, with interest thereon, and this affiant says that the said defendant is a non-resident of the State of West Virginia. 30

G. O. SMITH.

Sworn and subscribed before me this 3rd day of June, 1902.

GIBSON L. CALDWELL,
Justice of the Peace.

(Copy)
GIBSON L. CALDWELL, J. P.

Upon which is the following endorsement: Defendant is special officer at Coalport, Belvidere Div., Pennsylvania Railroad Company.

Attachment Bond—Justice's.

10 *Know all men by these presents,* That we G. O. Smith principal, and D. G. Brown surety, are held and firmly bound unto the State of West Virginia in the sum of eighty dollars, to the payment whereof, well and truly to be made, we bind ourselves and each of us, our executors, administrators and assigns. Sealed with our seals, and dated this 3rd day of June 1902.

The condition of the above obligation is such, that whereas G. O. Smith has sued out before Gibson L. Caldwell, a Justice of the Peace for Clay District, in
20 Ohio County, an attachment against the personal property of A. M. Bailey to recover the sum of \$35.28 exclusive of interest and costs. Now, therefore, if the said G. O. Smith shall pay to the said A. M. Bailey all costs and damages he may sustain by reason of said attachment, should it hereafter appear that the same was issued upon false suggestion, or without sufficient cause, then this bond to be void, otherwise to remain in full force and virtue.

G. O. SMITH (SEAL)

30

D. G. BROWN (SEAL)

Acknowledged before me and approved as sufficient this 3rd day of June 1902.

GIBSON L. CALDWELL,
Justice of the Peace.

(Copy)
GIBSON L. CALDWELL, J. P.

Attachment Order.

G. O. SMITH

vs.

A. M. BAILEY & PENNSYLVANIA
RAILROAD COMPANY, GAR-
ISHEE.

} An action before
Gibson L. Cald-
well a Justice of
the Peace of Ohio
County, West
Virginia.

To G. D. Brown Constable of Madison District, in said
County:

You are hereby commanded, in the name of the State
of West Virginia, to attach the personal property and 10
claims of the said defendant found within said County,
and not exempt from execution or other process, or so
much of the said property and claims as will satisfy the
plaintiff's demand, amounting to \$35.28 with interest
thereon from the 11st day of March 1899 and costs;
and to make due return of this order to me, with all your
proceedings, in writing, at my office in said county when
executed, but if not previously executed, within sixty
days from the date thereof.

Given under my hand, this 3rd day of June, 1902. 20

GIBSON L. CALDWELL,
Justice of the Peace.

(Copy)

GIBSON L. CALDWELL, *J. P.*

Upon which is the following endorsement: Attach-
ment rec'd 3rd June, 1902 at 1.30 o'clock P. M., D. G.
Brown, Constable.

Executed in Ohio County, W. Va., this 3rd day of
June 1902 at 2 o'clock P. M. by delivering a true copy
of the within process to J. J. McCormick, General Agent 30
of the corporation of the Pennsylvania Railroad Com-
pany, garnishee, at Wheeling, at its principal office or
place of business he then residing in Ohio County, W.
Va., and having charge of said principal office or place
of business of said company at Wheeling, Ohio County,
W. Va., at the time of such service, the President or

other chief officers of said corporation not being found in said County.

D. G. BROWN,
Constable.

Second Summons in Attachment.

State of West Virginia, Ohio County, to wit:

To G. D. Brown, Constable of said county:

Your are hereby commanded a second time, in the name of the State of West Virginia, to summon A. M. 10 Bailey whose credits have been attached to satisfy the Plaintiff's claim in this cause, to appear before me, at my office, in the district of Clay in said County, on the 10th day of July, 1902, at 10 o'clock A. M., to answer the complaint of G. O. Smith in a civil action for the recovery of money due on contract in which the plaintiff will claim judgment for thirty five dollars and twenty eight cents, exclusive of interest and costs.

Given under my hand and seal, this 9th day of June, 1902.

20 GIBSON L. CALDWELL,
Justice of the Peace.

(Copy)

GIBSON L. CALDWELL, *J. P.*

Upon which is the following endorsement:

G. O. SMITH, }
vs. } Second Summons, rec'd. 9th June
A. M. BAILEY } 1902 at 11 o'clock A. M.

D. G. BROWN, *Constable.*

30 Executed in Ohio County, W. Va., this 9th day of June, 1902 by posting true copies of the within summons at the front door of the Court House and other public places in Ohio County.

D. G. BROWN, *Constable.*

A Civil Action Before Gibson L. Caldwell, Justice of the Peace for Clay District, Ohio County, West Virginia.

G. O. SMITH

vs.

A. M. BAILEY & PENNSYLVANIA RAILROAD COMPANY, GARNISHEE.

Assignor,

S. B. Sneath,

Trenton, N. J.

Deft. is Special Officer at Coalport, Belvidere Div., Pennsylvania Railroad Company.

\$52.43

Action commenced 3rd June 1902.

Amount claimed by plaintiff \$35.28, balance on account with interest from 11th March 1899. Affidavit having been made and bond given conditioned according to law, I issued an attachment against the personal property of the defendant and at the same time issued summons for the defendant to appear 9th June 1902 at 10 ock. A. M. and directed the same to D. G. Brown, Constable.

Summons returned by officer as defendant not being found in the County.

Attachment returned by officer as executed, 9th June 1902. Issued 2nd summons in this case returnable 10th July 1902 at 10 ock. A. M. Second summons returned by officer as posted according to law.

10th July 1902, 10 ock. A. M. Plaintiff appearing and defendant failing to appear, I waited one hour, when, after hearing the evidence, it is considered that

the plaintiff recover judgment against the defendant for the sum of \$42.34 with interest thereon from this date until paid and costs.

GIBSON L. CALDWELL, *J. P.*

10th July, 1902. It appearing from the evidence that the facts contained in the affidavit in this case are true, it is therefore considered that the plaintiff recover judgment against the defendant on the attachment in this case and costs.

10

GIBSON L. CALDWELL, *J. P.*

STATE OF WEST VIRGINIA }
OHIO COUNTY. }

To wit:

I, Gibson L. Caldwell, Justice of the Peace for Clay District, Ohio County, West Virginia, do hereby certify that the above is a full and correct copy of all the record in the above entitled case as the same appears upon my docket.

Given under my hand this 16th day of June, 1902.

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GIBSON L. CALDWELL,
*Justice of the Peace for Clay
District, Ohio County,
West Virginia.*

Costs

Justice 5.25

Cons. & Cost

& Com . . . 3.84

Garnishee fee 1.00

10.09

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That the above record was accompanied by the necessary proofs of its authenticity and the proofs of the election of the said justice, constable and other officers therein named.

Said defendant further offered in evidence the statutes of the State of West Virginia in force at the time of said attachments and at the time of the trial of

this case, regulating the issuing and service and effect of writs of attachment, before a Justice of the Peace, whereby it appeared that a Justice of the Peace in said State has jurisdiction to issue an attachment against the personal property, rights and credits of a debtor, not being a resident of said State, and that service thereof upon any debtor of said defendant will render such debtor liable as garnishee, after judgment in favor of the plaintiff in attachment to pay to such plaintiff the amount owing by said garnishee to defendant in attachment to the extent that the same would be required to satisfy the claim of said plaintiff; which statutes were received in evidence. 10

It was further proved on the part of the defendant that several attachments had issued against A. M. Bailey from said Justices Court in West Virginia, for a sum exceeding in the aggregate the sum due to him from the defendant for wages; that A. M. Bailey is Andrew M. Bailey, the plaintiff in this suit; that the said Bailey is employed at Coalport, Trenton, New Jersey, and was employed at Trenton at the time of said attachments in West Virginia. 20

It was further proved on the part of the defendant that notice of the service of said several attachments on said Company by the Court in West Virginia, was given by said company to said Bailey within a few days thereafter; that said Bailey did not appear to defend said suits in said West Virginia Court; that said duly exemplified record of said court shows that on July 10, final judgment on said attachments against said Bailey for the amount claimed and costs, was entered in said court. 30

The defendant by its counsel insisted that it was entitled to withhold for its protection against said attachments respectively, the wages earned as aforesaid by said plaintiff, or so much thereof as should be required for that purpose. The said District Court over-ruled said defense and gave judgment for the plaintiff for the

full amount of his said wages, from which judgment the said defendant duly appealed by notice in writing and entered into bond with surety duly approved etc., all as provided by the act entitled, "An act to provide for and regulate appeals from any District Court in any City of the State to the Supreme Court." approved April 3rd, 1902. Chapter 172 P. L. 1902, page 565.

Dated October , 1902.

We agree to the above state of the case.

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HARRY C. VALENTINE,
Att'y for Pl'tff.

CHAS. E. GUMMERE,
Att'y for Def't.

NEW JERSEY SUPREME COURT.

ANDREW M. BAILEY

vs.

THE PENNSYLVANIA RAILROAD
COMPANY.

JOSEPH NAYLOR

20

vs.

THE PENNSYLVANIA RAILROAD
COMPANY.

OPINION.

(Filed February 25, 1903.)

1. It is no defense to an action upon contract that the debt sued for has been attached in the hands of the defendant in a foreign jurisdiction by a creditor of the plaintiff.

Quære, Whether, in such case, the suit should not be
30 stayed or the execution be controlled?

Appeal from the District Court of the city of Trenton.
Argued at the November term, 1902, before Justices
GARRISON and GARRETSON.

For the plaintiffs, HARRY C. VALENTINE.

For the defendant, CHARLES E. GUMMERE.

The opinion of the Court was delivered by GARRISON, J.

These appeals present a single question, namely, whether it is any defense to an action upon contract that the debt sued for has been attached by a creditor of the plaintiff in the hands of the defendant. The two cases differ only in that the attachment in the case of Bailey had gone to judgment, while in the case of Naylor judgment had not been rendered. In neither case had the sum garnisheed been paid over by the defendant. The attachments were instituted in the State of West Virginia, and levied upon wages earned in New Jersey by residents of the latter State. Neither these circumstances nor the validity of the attachment proceedings are of any consequence upon the question that is presented by these appeals in view of the fact that the matter set up by the defendant does not meet the charge against it. It could not be pleaded in bar, for it neither denies the contract nor shows performance. It could not be pleaded in abatement, because it does not tend to end the suit, but, at most, only to retard its progress. Even where the earlier and the later suit are between the same parties, and of the same date, they must be of the same jurisdiction in order to invoke successfully the rule here contended for by the defendant. The pendency of such prior suit in a foreign jurisdiction may furnish ground for staying the suit here, but not for its abatement. *Kerr v. Willetts, 19 Vroom, p. 78.*

Whether the pendency of an attachment suit of different plaintiff should lead to the same practice is a question that is not now presented. All that is presented upon these appeals is the legal propriety of the action of

the District Court in overruling the said defense and giving judgment for the plaintiffs. This action we affirm, and order that like judgments be entered pursuant to the statute under which these appeals are taken. (*P. L. 1902, p. 565.*)

It may be that upon a proper application execution should be stayed, but upon this point no opinion is expressed.

A true copy.

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WM. RIKER, JR., *Clerk.*

NEW JERSEY COURT OF ERRORS AND APPEALS.

<p>ANDREW M. BAILEY, <i>Defendant in Error,</i> <i>vs.</i> THE PENNSYLVANIA RAILROAD COMPANY, <i>Plaintiff in Error.</i></p>	}	<p>On Error to Supreme Court.</p>
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ASSIGNMENT OF ERRORS.

(*Filed April 30, 1903.*)

20 And now, to wit, on this first day of April, in the year nineteen hundred and three, before the Court of Errors and Appeals of the State of New Jersey, comes the said The Pennsylvania Railroad Company, plaintiff in error, by Alan H. Strong, its attorney, and says that in the record and proceedings, and that also in the giving of judgment in said Supreme Court on the appeal by the said The Pennsylvania Railroad Company in said cause, there is manifest error in this:

30 1. That the said Supreme Court affirmed the judgment of the District Court of the city of Trenton, from which said appeal was taken, whereas the said Supreme

Court should have reversed the said judgment of the said District Court.

2. And in this: that the said Supreme Court held and adjudged that the proceedings upon attachment at the suit of G. O. Smith, plaintiff, against said Andrew M. Bailey and the Pennsylvania Railroad Company as garnishee, before Gibson L. Caldwell, a justice of the peace in and for Ohio county, in the State of West Virginia, did not constitute a defence to the said action in the said District Court, either in abatement or in bar. 10

3. And in this: that the said Supreme Court, in and by its said judgment on the said appeal, failed and refused to give full faith and credit to the said proceedings had in the said Ohio county and State of West Virginia, on attachment before said Gibson L. Caldwell, a justice of the peace in and for said county and State, at the suit of G. O. Smith, plaintiff, and the said Andrew M. Bailey and The Pennsylvania Railroad Company as garnishee *pro ut* the agreed statement of facts on said appeal contrary to the provisions of section 1 of Article 20 IV of the Constitution of the United States and of the act of Congress in that behalf.

Wherefore, the said plaintiff in error, by reason of the said errors and of divers other errors in the records and proceedings aforesaid appearing, prays that the said judgment of the said Supreme Court may be reversed, set aside and for nothing holden, and that it may be restored to all things that it hath lost by reason thereof.

ALAN H. STRONG,

CHARLES E. GUMMERE, 30

Attorneys and of Counsel with Plaintiff in Error.

JOINDER IN ERROR.

Joinder in Error on usual form.



