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GARNISHMENT.

GARNISHMENT is a proceeding at law, whereby a creditor may lay hold of debts, credits or property, belonging to his debtor, but in the hands of a third person, and subject them to the payment of his debt. The proceeding is variously known in the different states as foreign attachment, factorising, trustee process, and garnishment. It has its origin either in local custom or statutory provision. In Vermont, and probably in most of the states, it does not exist except by force of statute. In the statutes, therefore, will be found the basis of the jurisdiction of courts, in applying this remedy, together with the method of its application: *Baxter* v. *Vincent*, 6 Vt. 614.

What establishes Liability.—The liability of a garnishee, both to the principal debtor and his creditor, is governed by the contract or other relations existing between the garnishee and principal debtor. Garnishment cannot have the effect of changing the nature of a contract between the garnishee and the principal debtor, or of preventing the garnishee from performing a contract with a third person. If by any pre-existing *bona fide* contract, the accountability of the garnishee to the principal debtor has been removed or modified, the garnishee's liability is correspondingly affected. Thus a contract, anterior to attachment, *bona fide*, and for good consideration, between two railroad companies, whose roads connected, and who had established a system of through freight

and fares, under which each received and advanced for the other, and balances were to be settled monthly between them, controls an attachment of the funds of one company in the hands of the other: *Balt. & Ohio Rd. Co.* v. *Wheeler*, 18 Md. 372.

Who are Liable.—As a general rule corporations, as well as natural persons, are by statute made liable to garnishment: *Balt. & Ohio Rd. Co.* v. *Gallahue's Adm'r*, 12 Gratt. 655. But in general, a person who is not and never has been a resident within the state wherein the process of garnishment is sued out, is not liable to it: *Hart* v. *Anthony*, 15 Pick. 445; *Roy* v. *Underwood*, 3 Id. 302; *Miller* v. *Hooe*, 2 Cranch C. C. 622: *Baxter* v. *Vincent*, 6 Vt. 614; *Jones* v. *Comings*, 6 N. H. 497. In Massachusetts, a railroad company incorporated by the laws of another state, cannot be charged by trustee process, although in possession of railroads in Massachusetts under leases from the proprietors thereof: *Gold* v. *Housatonic Rd. Co.*, 1 Gray 424. Nor can a foreign corporation that has no goods, effects or credits within Massachusetts be charged by trustee process, although many of the members and officers of such corporation reside in that state, and its books and records are kept there: *Danforth* v. *Penny*, 3 Metc. 564. Funds in possession of the president, officers and agents of a railroad company are in possession of the company, and are not subject to garnishment in an ordinary action by a creditor against the company: *Wilder* v. *Shea*, 13 Bush 128. The appropriate action by a creditor against a railroad company is by application to a court of equity, seeking a discovery as to the condition of the company, and upon the failure of the chief officer or officers of the company to pay when directed, they may be imprisoned for contempt, and the chancellor will take possession of the road by placing it in the hands of a receiver, and apply the net income or surplus-fund to the payment of the creditor's claim. "To permit any and every agent of a corporation like this to be garnisheed before or after judgment, would result in the sacrifice of all the private and public interests connected with it. The chancellor, by giving to the creditor the income of the road, retaining enough to pay the necessary expenses of the corporation, has given him all that he has the right to demand, and at the same time preserves the corporate property for private and public use. Nor does this ruling prevent a corporation from being garnisheed as the debtor of a third party, whose creditor is seeking to make his debt; in such

a case, however, the court will require payment to be made in the same manner as if the company were the real debtor." Per PRYOR, J., in *Wilder* v. *Shea*, 13 Bush 137. In *Dobbins* v. *Orange and Alexandria Ry. Co.*, 37 Ga. 241, it was held that the Western Atlantic Railroad, being the property solely of the state of Georgia, and under the power of the legislature at all times, the superintendent belonged to that class of public agents, like the governor and treasurer of the state, whom reasons of policy exempt as such agents from process of garnishment. And a carrier who receives goods under an engagement to forward them to the consignee, cannot hold them to answer an attachment at a suit of the creditor of the shipper, previously served upon him, nor is he liable in respect to him upon the attachment: *Bingham* v. *Lamping*, 26 Penn. St. 340.

Indemnity.—At common law, the sheriff, or other officer serving a writ, has a right to indemnity before seizing goods on an execution where the defendant's property in them is disputed, and this principle extends to seizures under a foreign attachment, or an execution attachment, so as to protect the sheriff, and through him the garnishee, where the sheriff makes him his bailee pending the process. The plaintiff and the sheriff cannot by a mere copy service of the writ escape the risks of the attachment and throw them upon the garnishee, by requiring him to retain the goods when the title to them is in dispute: *Shriver* v. *Harbaugh*, 37 Penn. St. 399.

Service, and what is Liable.—In garnishment or foreign attachment, the first thing is to "serve" the property, and next the person in whose hands it is found; but the writ may be well executed when the officer is prevented by fraud or force from getting at the property. In such cases, the return should show the facts, and that the officer has attached as nearly according to the requirements of the statute as possible; if the property is in the hands of the garnishee he cannot take advantage of his own wrong on the ground of a defective service: *Pennsylvania Railroad Co.* v. *Pennock*, 51 Penn. St. 244. Ordinarily where a corporation is summoned as trustee, service of the writ by leaving a copy at the place of last and usual abode of the treasurer or other proper officer is sufficient: *Harris* v. *Somerset & Kennebec Ry. Co.*, 47 Me. 298. The statutes generally designate upon what officer of a corporation service of writs shall be made. Such statutory provisions must of course be followed. In Georgia it has been decided that the Cen-

tral Railroad and Banking Company cannot be served with a summons of garnishment by serving *any one* of its agents. The service must be on the president of the company: *Clark* v. *Chapman & Central Railroad & Banking Co.*, 45 Ga. 486. The service of garnishment process against a railroad company returned in these words: "Served on the Montgomery and Eufaula Railroad Company, the garnishee, by leaving a copy of the garnishment with Lewis Owen, President of said road," is sufficient to authorize a judgment *nisi* on failure to answer, against the company, if there is no appearance for the company: *Montgomery & Eufaula Rd. Co.* v. *Hartwell*, 43 Ala. 508. But the return of a sheriff in a foreign attachment, "Executed by delivering to D. A. Stewart, agent of the Pennsylvania Railroad Company, a true and attested copy of the within writ, and making known the contents thereof, and summoning the Pennsylvania Railroad Company as garnishee," is not proper. The property was susceptible to seizure if present; and not being present, and there being no seizure or declaration in the presence of witnesses, it was not bound by the writ, and therefore no person was bound to answer as garnishee: *Pennsylvania Rd. Co.* v. *Pennock*, 51 Penn. St. 244. And service of notice of a judgment *nisi* rendered on the failure of the Montgomery and Eufaula Railway Company, the garnishees, to answer, returned in these words: "Executed by leaving a copy of the within with Lewis Owen, President of the Montgomery and Eufaula Railroad Company, this 4th day of May 1868," is insufficient to sustain a judgment final on said judgment *nisi* without proof that Owen was president at the date of service: *Montgomery & Eufaula Rd. Co.* v. *Hartwell*, 43 Ala. 508. Where a corporation, summoned as trustee, has appeared, submitted to the jurisdiction of the court and made disclosure, and judgment has been entered, it is too late to object to a service defective in respect to the place of leaving a copy of the writ: *Harris* v. *Somerset & Kennebec Ry. Co.*, 47 Me. 298. It would seem that any property or choses in action owned by a railroad company but in the hands of a third person might be garnisheed to meet the claims of the company's creditors, and this appears to be the general rule. But it was intimated that under the Wisconsin statute a garnishee was liable only for "property" which might be turned out on execution; or "indebtedness" for which an action or assumpsit would lie in favor of the principal defendant: *Keyes* v. *Mil. & St. Paul Rd. Co.*, 25 Wis. 691. And

in *Balt. & Ohio Rd. Co.* v. *Gallahue's Adm'r*, 12 Gratt. 655, it seems that the statute in relation to attachment at law refers to debts due from the garnishee to the defendant at the time of the service of the process upon the garnishee. In the same case it was queried whether the statute operates at law upon debts which though due at the time of the service of the attachment upon the garnishee were not then payable. It is difficult in this matter to lay down rules of general application, garnishment being to so great an extent a purely statutory proceeding. It has been decided, however, that the income of a railway company earned after a mortgage authorized by statute took effect might, so long as the company remained in the management and use of its property, be attached by trustee process to secure a claim, accruing since the mortgage became effectual, for negligently injuring the property of the plaintiff at a highway crossing: *Smith* v. *Eastern Ry. Co.*, 124 Mass. 154; *Degraff* v. *Thompson*, 24 Minn. 452; but a different view was taken in Illinois, where a corporation had given a mortgage or trust deed of all its property, tolls, incomes, franchises, &c., to secure the principal and accruing interest on its bonds, and its revenues so pledged were held not liable to garnishee process by its judgment creditors, after the execution by it, of such mortgage or trust deed: *Galena & Chicago Union Rd. Co.* v. *Menzies*, 26 Ill. 121. Where a city, by its vote, has in accordance with the charter of a railway company, designated on what part of the railway line the money raised and subscribed by it should be expended, a general creditor cannot by trustee process direct and hold such money for a debt not contracted for the purpose designated: *Pike* v. *Bangor & Calais S. L. Rd. Co.*, 68 Me. 445. Where a railroad company contracts to pay on a specified day of each month, for seventy-five per cent. of the work done by their employees in the preceding month, upon a stipulation that the balance shall be retained as a forfeiture, if the employee should fail to fulfil his part of the contract, and the value of the whole month's work is to be estimated and certified after the end of the month, before any payment for it is to be made, no indebtedness arises for any part of it, before the month has expired; and therefore no part of such value can be secured by summoning the company as trustees before the month has expired. It was also decided that while the employee's part of the contract remains unfulfilled, the contingent twenty-five per cent. is not attachable by trustee process. Finally, it was

held, that a party summoned as trustee, while it is contingent whether he will be indebted to the principal defendant, will be discharged. And that the changing of such a contingent into an absolute indebtedness, after the service upon the trustee, though before the judgment, will have no effect to render the trustee chargeable: *Williams* v. *Androscoggin & Kennebec Rd. Co.*, 36 Me. 201; see also, *Harris* v. *Somerset & Kennebec Ry. Co.*, 47 Id. 298. Money in the hands of a station agent of a railway company, received for tickets sold and freight collected, cannot be attached in his hands by trustee process, in a suit against the company, by one of its creditors: *Pettingill* v. *Androscoggin Ry. Co.*, 51 Me. 370; *Fowler* v. *Pitts., Ft. W. & C. Ry.*, 35 Penn. St. 22; *Gery* v. *Ehrgood*, 31 Id. 329.

Answer.—If a corporation be made a garnishee it may answer by its proper officers, but the answer must be sworn to: *Oliver* v. *Chicago & Alton Rd. Co.*, 17 Ill. 587. And its answer must be in the only mode in which a corporation can answer, *i. e.*, under its corporate seal: *Balt. & Ohio Ry.* v. *Gallahue's Adm'r*, 12 Gratt. 655. It may answer by its attorney, and he need not be a member of the corporation, or their general business agent. His answers are to be considered true until disproved; thus when, after due examination and inquiry, the attorney, through whom the disclosure of a corporation is made, shall have answered all the interrogatories according to his best belief and information, if his statement show that the corporation has no goods, effects or credits of the defendant, and if no opposing proof is introduced, the corporation is to be discharged, although its attorney had no personal knowledge of its dealings, but derived his information wholly from its books and the statements of its officers: *Head* v. *Merrill*, 34 Me. 586. As a general rule the answer of a garnishee must stand, whether it be a denial or affirmation of new matter, until evidence is produced tending to overthrow it: *Holton* v. *So. Pac. Ry. Co.*, 50 Mo. 151. A corporation can only be compelled to answer in the place where it may be lawfully sued. Thus the Central Railroad and Banking Company of Georgia, has, by law, its principal office of business at Savannah, and it cannot be required to answer a summons of garnishment in any other county than the county of Chatham unless it appear on the record that the debt it is charged to owe is within some of the statutes authorizing corporations to be sued out of the county where the principal business office is situate:

Clark v. *Chapman & Central Rd. & Banking Co.*, 45 Ga. 486. The garnishee is bound to answer before the default day in the term of the court wherein it is summoned, unless by leave of court further time is given it to answer, and if the corporation being garnisheed neglects so to answer until the plaintiff has obtained his judgment against the principal debtor, and the jurors have been discharged for the term, it is error in the court to permit it then to answer, unless for good cause shown. Ibid. A supposed trustee, in addition to his sworn answer and statement, may allege and prove any other fact not stated or denied by him that may be material to the decision of the question of his liability: *Staniels* v. *Raymond*, 4 Cush. 315. A railway corporation in making a disclosure by its agent under a trustee process is not concluded by the entries upon its books, although they show a balance to be in favor of the principal defendant. If the agent discloses that it arose from mistake or fraud in the amount of credit reported, and no facts are disclosed showing that there was no such error, the corporation is not chargeable as trustee: *Bigelow* v. *York & Cumberland Rd. Co.*, 37 Me. 320.

Defences.—Any defence may be made to an action of garnishment which can be successfully urged to an action brought by the principal debtor against the garnishee to recover the debt, property or other demand sought to be garnisheed. So a tender of the property demanded may be made, and it will cut off any claim for costs. Where a railroad company is charged as trustee by an employee, whose claim is payable in stock, a tender of certificate of a sufficient number of shares, duly signed and filled out, except as to the name of the holder, is sufficient, although such certificates be not separated from the treasurer's book: *Harris* v. *Somerset & Kennebec Rd. Co.*, 47 Me. 298. And a set-off or lien of the garnishee upon the property or debt due from him may be made in defence to the garnishment. Thus where A., having obtained possession of chattels under a judgment against B., used them until the judgment was reversed and the property awarded B., the claim of B. for such use would be a good set off against any liability on his part to A. which might subject him to garnishment: *Keyes* v. *Mil. & St. Paul Rd. Co.*, 25 Wis. 691. Where property of the principal defendant was taken under a *bona fide* claim of ownership, and so used in processes of manufacture or otherwise, as to lose its identity, the garnishee's only liability therefor is in damages for the conversion.

Such damages are not the subject of garnishment: *Keyes* v. *Mil. & St. Paul Rd. Co.*, 25 Wis. 691. After garnishment, however, the garnishee has no right to pay the debt or deliver the property garnisheed to the principal debtor. If he does so it is a contempt of court, for which he may be punished in the discretion of the court, and such payment or delivery would subject the garnishee to an action for damages. Where the officer's return on a writ of garnishment shows that it was served on the garnishee at a stated hour, a payment made by the garnishee to the principal debtor on the same day would be regarded as subsequent to the service of the writ, in the absence of proof to the contrary: *Harris* v. *Somerset & Kennebec Rd. Co.*, 47 Me. 298. B. was authorized to canvass for and receive subscriptions for the capital stock of a railroad company, then unorganized, his compensation to be one dollar per share on all subscriptions obtained by him, to be paid in the manner prescribed in the resolution conferring said authority, "and the further sum of three per cent. upon the whole amount of subscriptions which he may be instrumental in obtaining, to be paid as the subscriptions to the capital stock shall be paid in." Under the authority thus given, B. procured subscriptions to the capital stock of the company. Subsequently a very large amount of stock so procured to be subscribed by B. was forfeited under the charter for non-payment of instalments due thereon, and the forfeitures were not remitted by the company, nor did they sell, or attempt to sell, any part of the stock so forfeited, nor did they institute actions for the recovery of any of the subscriptions for said shares. Upon an attachment issued on a judgment recovered against B., and laid in the hands of the railroad company, for the purpose of affecting B.'s supposed claim against the company for commissions upon the amount of the subscriptions unpaid on the forfeited share, it was *held*, 1st. That there were no rights or credits in the hands of the company belonging to B., in respect to said forfeited shares. 2d. That until the money subscribed or its equivalent was realized by the company, either by the voluntary payment of the subscriber or his assignee, or by the modes of coercion designated by the charter, no commission could be claimed as due and payable thereon under the contract. 3d. That whatever may have been the cause of the delay on the part of the company in attempting to make the subscriptions available, as the agent procuring the subscriptions is interested in the money to be realized therefrom, it may be that he has ample rem-

edy by which to compel the company either to sell the stock or to remit the forfeitures and institute actions to recover the balance due on the subscriptions. 4th. But until that be done and the money actually realized there is no such certain or ascertainable amount due for commissions under the contract as to be liable to attachment: *Maryland Agricultural College, use of J. H. Skinner*, v. *Balt. & Potomac Rd. Co., Garnishee of Robert Bowie*, 43 Md. 434. And where the garnishee is sued by the principal debtor to recover the debt or property, he may set up the garnishment in defence of the action. Thus in an action to recover money due on a contract, it is a sufficient defence to show that the money sought to be recovered has been attached by garnishment duly issued by a court of a sister state, in an action there prosecuted against the plaintiff by his creditors, although it appears that the plaintiff and such creditors are all residents of the state in which the plaintiff sues: *B. & O. Rd. Co.* v. *May*, 25 Ohio St. 347.

Priorities.—Cases may arise presenting questions of precedence, where there are several creditors seeking to collect their claims by garnishment and otherwise. No process of garnishment can affect previously acquired liens or vested rights. Thus, where the property garnished is in the hands of a person who has a lien upon it for services rendered in relation to it, as, for example, for carrying it, the garnishee may insist upon his claim being first satisfied before the property is applied to the use of the garnishor. So where the property in the hands of the garnishee is subject to mortgages held by third persons, the property must be applied to their payment before it can be used to satisfy the garnishment. A garnishing creditor will not be permitted to take from the hands of another creditor assets which have been transferred by their debtor for that creditor's indemnity; and the court will determine the amount of indebtedness existing at the time of the decree, and will not confine itself to indebtedness existing at the time the answer was made: *Nolen* v. *Crook*, 5 Humph. 312. The receiver of a railway company holds the rents, issues and profits for the protection of the mortgagees; and creditors of the mortgagor cannot by attachment or garnishee process secure a more favorable footing than that held by the principal debtor: *New Port & Cin. Bridge Co.* v. *Douglass*, 12 Bush 673. Tolls received on a railroad after judgment rendered against the company and after the appointment of a sequestrator are not bound by such judgment so as to give it a preference