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(This is the second of a series of articles on comparisons and contrasts between Colorado and California law and procedure.)

SO many claims emanate from Colorado and are sent for collection to, or enforcement in, California, that an understanding of the theory of attachments in the latter State is not only of interest but of vital concern to Colorado lawyers.

Instead of having attachments based upon actions in contract plus the filing of an affidavit showing some special ground for attachment, as is the case in Colorado, attachments in California are issued in all cases in which (1) the action is "upon a contract, express or implied, for the direct payment of money, where the contract is made or is payable in this State (the State of California), and is not secured by any mortgage or lien upon real or personal property, or any pledge of personal property, or if originally so secured such security has, without any act of the plaintiff or the person to whom the security was given, become valueless"; (2) where the action is "upon a contract, express or implied, against a defendant not residing in the State of California, or who has departed from the State, or who cannot after due diligence be found within the State or who conceals himself to avoid service of summons"; and (3) where the action is "against a defendant, not residing in the State of California or who has departed from the State, or who cannot after due diligence be found within the State, or who conceals himself to avoid service of summons to recover a sum of money as damages, arising from an injury to property in this State, in consequence of negligence, fraud or other wrongful act".

Thus it will be seen that, except in the case of actions against non-residents or those departing from the State, etc., where the action is for negligence, fraud or other tort, all attachments must be based upon actions upon contract, express or implied, for the direct payment of money. Consequently, actions for mere breach of contract do not justify an attachment, excepting, apparently, any action upon a contract against a non-resident or a defendant absconding or concealing himself.

However, in the case of actions against residents in the State of California where the contract is for the direct payment of money, another requisite of the California Code of Civil Procedure which is of considerable embarrassment to forwarding attorneys is that condition which allows attachments only in cases where the contract is made or is payable in the State of California. In other words, no attachment can be obtained in the State of California against a resident where the contract is made and payable outside the State of California. Promissory notes made and payable in Colorado, therefore, cannot be a basis for attachment and litigants here are therefore compelled to resort to the ordinary law suit with the usual chances of recovery upon execution.

Attachments are issued after the filing of the complaint and the issuance of summons and filing of an affidavit showing that the plaintiff is entitled to the attachment and showing the amount of indebtedness, and also containing a statement that the attachment is not sought and that the action is not prosecuted to hinder, delay or defraud any creditor of the defendant. Before issuing the writ

the Clerk must require a written undertaking on the part of the plaintiff in a sum of not less than $200.00 and not exceeding the amount claimed by the defendant, with sufficient sureties, to the effect that if the defendant recovers judgment, the plaintiff will pay all costs that may be awarded to the defendant and all damages which he may sustain by reason of the attachment, not exceeding the sum specified in the undertaking. Inasmuch as a householder as well as a freeholder may be sureties on such an undertaking, the Code provides that at any time after the issuing of the attachment, but not later than five (5) days after actual notice of the levy thereof, the defendant may except to the sufficiency of the sureties. The hearing upon such exception is had, at which time the sureties must justify before a Judge or County Clerk and prove their financial responsibility upon the bond. Where there is a failure of such justification, the writ of attachment must be vacated by the Judge or Clerk.

In cases of debts, etc. due by others to the defendant, the same attachment writ is served upon such parties instead of a writ of garnishment issuing, as in Colorado, in aid of execution or attachment. On occasions, certain banks here take the position that they will not answer the writ of attachment, or as we would call it in Colorado, the garnishment. In such case it becomes necessary to obtain an Order of Court directing the garnishee to appear either before the Court or a Referee appointed for the purpose, to be examined as to the alleged indebtedness—a laborious and at times an expensive procedure.

In practice the attorney for plaintiff is required at the time of the request for writ of attachment, to file a statement with the Clerk of the Court as to what he proposes to attach and the value thereof. Likewise, plaintiff or his attorney is required to give written instructions to the sheriff specifying what is to be attached.

Where a third party claims to own the property attached, the Code provides in cases of execution as well as attachment, that such third party may file a written claim verified by his oath or that of his agent, setting out his right to the possession of such property, and serve same upon the sheriff. Whereupon, it becomes the duty of the plaintiff or the person in whose favor the writ of attachment or execution runs, to furnish on demand of the sheriff indemnification to the latter against such claim in a sum equal to double the value of the property; otherwise the sheriff is not bound to keep the property so levied upon.

Many unexpected third party claims arise, particularly because of the defective status of the law of California in relation to contracts of sale. In Colorado, the law still provides that a contract for sale of personal property which retains the title in the seller is good only between the parties to such contract and void as to third parties, and of course the method of protecting the seller is to make a definite sale and take back a chattel mortgage in statutory form and record same in statutory manner. While California provides for chattel mortgages, and also specifies the form of the chattel mortgage and requires not only that the form be substantially in accordance with the statutory form and shall be acknowledged before recording, but also requires that all of the parties thereto shall make affidavit to the effect that such chattel mortgage is made not for the purpose of hindering, delaying or defrauding creditors, etc., yet there still persists here the recognition of the rule that a title does not pass in property until so intended. Consequently, instead of resorting to the filing of chattel mortgages and placing same of record, installment

houses and others make a lease contract or agreement of sale upon installments, retaining the title in the seller. This is not required to be recorded. Your purchaser, therefore, buys at his peril and the party causing a levy of attachment or execution to be made therefor, never knows when a third party claim may be filed on behalf of some holder of an installment contract, and upon the filing of such claim it becomes necessary that the so-called "seller" or third party claimant should be paid the amount of his claim unless the attaching party or execution creditor presents to the sheriff within five days a verified statement that the claim of title under the conditional sale is void for reasons therein specified and delivers to the officer a good and sufficient indemnity bond which bond is made both to the officer and seller or third party claimant.

Canadian Justice

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ON the evening of July 18, 1927, one George McDonald and his wife Doris, together with one Frank Price, anxious to leave Canada before being apprehended and charged for having issued spurious checks, engaged the services of a taxi driver to take them from Montreal to Rochester, New York. When about fifty miles out of Montreal, they killed the driver and taking his money and the machine, fled to the United States.

The McDonalds, travelling under the alias of "Carter" arrived in Denver about August 5th. While here they spared neither storemen nor bankers in their successful campaign to see just how much they could raise on wholly worthless paper. They then proceeded to Butte, Montana where they were arrested by local police acting upon wires from Denver. After being returned to Denver their real identity was discovered from finger prints, etc. and the Canadian authorities were notified.

In due course Canadian Authorities arrived with extradition papers. These were the most complete that the writer has ever seen. Not a detail had been overlooked and it was apparent that no expense had been spared in preparing them. Canadian Justice thinks only of results. No matter how costly the securing of detailed information, if it is a link in the chain, the Canadian authorities see that it is secured.

The case of The King as George McDonald and Doris McDonald was called for trial on the morning of December 6, 1927 in a little town called Valley Field in the province of Quebec, about forty miles from Montreal. It is a French speaking community and the trial therefore was conducted in both French and English. Everything said in French was translated into English and vice versa.

A jury panel of about one hundred had been summoned for service. These men were selected by lot by the Sheriff of the County. The writer was credibly informed that all juries in that community are for conviction. Once a man is apprehended it is almost taken for granted by the jury that he is guilty.

The defendants were represented by the most able lawyers in Montreal. They had been appointed by the Court and although the case lasted nearly two weeks, they received nothing for their services. The attorney for the Crown received $20 a day when en-