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Attachment - Public Institution as Garnishee. Hughes v. Svboda

ATTACHMENT — PUBLIC INSTITUTION AS GARNISHEE. *HUGHES V. SVBODA*[1]

While the defendant-appellee, Svboda, was serving a term in the Maryland House of Correction, plaintiff-appellant, Hughes, instituted in the Circuit Court for Anne Arundel County non-resident attachment proceedings against Svboda for an alleged claim of $775. The writ of attachment was served upon the superintendent of the House of Correction, and that institution was summoned as garnishee. At the time of his incarceration Svboda had on his person cash amounting to $426.25 which was taken by the warden, of which amount, prior to laying the attachment, Svboda had spent a small sum. As to the remainder, the Board of Welfare, through the Attorney General of the state, confessed assets. The motion of Svboda, defendant, to quash the attachment was granted, and an appeal was taken from such action. The Court did not discuss appellee's contentions that he had been a resident of Maryland for some months prior to sentence, that he was amenable to suit in the Circuit Court of Anne Arundel County at the time the attachment was issued, and that the writ of summon issued could readily have been served upon him. The Court affirmed the order upon the principle that a public officer or public institution is not subject to garnishment. In reference to the confession of assets, it was held the superintendent had received the funds in question by virtue of his office, and, since the laws of the State were not intended to give authority to lay attachments in the hands of public officials or institutions, it necessarily follows that their operation is not suspended by a confession of assets. The appellee's rights must be determined by the law of the State, and not by the pleasure of its subordinates.

Although the statute[2] prescribes in effect that an attachment may be laid in the plaintiff's own hands or in the hands of "any other person", it has long been held in this jurisdiction that, notwithstanding the apparent broad scope of this phrase, it does not include within its purview a governmental or a municipal corporation; the rule being that such bodies corporate are by reason and necessity excluded unless specifically named[3]. It was said in *Wilson v. Ridgely*[4] that "great public inconvenience would arise if money

[1] 168 Md. 440, 178 Atl. 108 (1935).
[2] Md. Code, Art. 9, Sec. 29.
[3] Baltimore v. Root, 8 Md. 95, 63 Am. Dec. 692 (1855); Gomborov on Attachment, 24 et seq.
[4] 46 Md. 235, 248 (1877), quoting with approval from Bulkley v. Eckert, 3 Barr (Pa.) 368 (1846).

could be thus arrested in the hands of officers, and they be made liable to all the delay, embarrassment and trouble that would ensue from being stopped in the routine of their business, compelled to appear in court, employ counsel and answer interrogatories, as well as take care that the proceedings are regularly carried on." The holding in *Baltimore v. Root*,[5] to the effect that salaries due public officials are exempt from attachment was expressed as a more general principle in *Wilson v. Ridgely*[6] to the effect that an attachment cannot be maintained which has been levied upon any funds held by a person as a public officer. The principle was stated again in *Dale v. Brumbly*[7] concerning funds in the hands of a Clerk of a court.[8] *Robertson v. Beall*[9] is obviously distinguishable. In that case, funds in the hands of an ex-sheriff, consisting of fees due to and collected by him for an ex-register of wills were held liable to attachment; both parties being out of office at the time the attachment issued, they stood in the same relation to each other as any other creditors and debtors. Their terms of office having expired, there was nothing in public policy which interdicted the levying of the attachment.[10]

The general rule is stated in *Corpus Juris*:[11] "the exemption of a State from being made garnishee extends to its officers and agents. The same rule applies to federal ofcers and agents."

An interesting holding was arrived at in the Tennessee case of *Dickens v. Bransford Realty.*,[12] wherein an attachment sought to reach funds held by a railroad operating under the supervision of the Director General of Railroads. Deciding that garnishment would not lie, the Court stated: "While it is true that Public Act No. 107 of the Sixty-Fifth Congress very broadly authorized suits against such common carriers, still their liability to suit is not greater than that of the various municipal corporations of this state. Such liability, however, should be confined to their own creditors. Since it is the settled policy of this State to hold immune from garnishments all municipalities and other

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[5] Supra, note 3.
[6] Supra, note 4.
[7] 98 Md. 468, 56 Atl. 807, 64 L. R. A. 112 (1904).
[8] As this purports to deal solely with the position of a public institution as garnishee, the question of funds in custodia legis will not be discussed herein. For an interesting case on this latter problem, see Horsey Co. v. Martin, 142 Md. 52, 120 Atl. 235 (1923).
[9] 10 Md. 125 (1856).
[10] See also L. R. A. 1917-F, 1119.
[11] 28 C. J. 61, Garnishment, Sec. 74.
[12] 141 Tenn. 387, 210 S. W. 644 (1918).

governmental agencies, we think such protection must be accorded to defendant . . ."[13]

The salary of an instructor in a Los Angeles public school was held not subject to garnishment, in *Weiser v. Payne.*[14] However *Smith v. City of Mobile,*[15] from Alabama, held a city firemen's compensation subject to garnishment, since the fireman was an employee of the city, and his $75 per month compensation was "salary" and not "wages" within the statute authorizing garnishment of money due city employees as salary.[16] This case is an instance of the trend of legislative policy reflected by statutes making express provision, by garnishment or closely analogous remedies, for the subjection of the compensation of public officers and employees to the claims of their creditors.[17] This is, of course, in strong contrast to the policy of the courts, as exemplified by *Baltimore v. Root*[18] or by the recent Georgia case of *Haverty Loan and Savings Co. v. McAfee,*[19] holding that a municipal employee's creditor having an assignment of salary, could not enjoin the municipality from paying to the employee the salary due him, again speaking of public policy exempting municipalities from garnishment of wages due a municipal employee.[20] Numerous courts are in accord with *Baltimore v. Root* in holding that a garnishment statute making corporations liable to garnishee process does not apply to municipal corporations,[21] although a respectable minority[22] of jurisdictions has held otherwise.

The attitude of the courts and the extent to which they sometimes go in interpreting statutes is illustrated by *Owen v. Terrell.*[23] A New Mexico statute provided in effect that in all cases where the plaintiff has a judgment in some court of the state against the defendant any public officer may be summoned as garnishee. The court held that there was no express or implied intent by the act in question to subject the salary of a public officer to garnishment. "So far as the act itself appears, the Legislature may have only intended to extend the process of garnishment to public officers in

[13] Ibid., 141 Tenn. 391.
[14] 110 Cal. App. 378, 294 Pac. 407 (1930), followed by Lay v. Hammond, 212 Cal. 665, 300 Pac. 10 (1931).
[15] 230 Ala. 584, 162 So. 361 (1935).
[16] Alabama Code, 1928, Secs. 8088, 8090.
[17] 28 C. J. 181, Garnishment, Sec. 219.
[18] Supra, note 3.
[19] 179 Ga. 673, 177 S. E. 241 (1934).
[20] See also Shepherd v. Jones, 228 Ala. 307, 153 So. 223 (1934).
[21] Ann. Cas. 1913-B, 746, 56 A. L. R. 602 et seq.
[22] Bray v. Wallingford, 20 Conn. 416 (1850); Wilson v. Lewis, 10 R. I. 285 (1872).
[23] 22 N. M. 373, 162 Pac. 171 (1916).

cases where such officers had come into possession of property or money of the judgment debtor by virtue of the office or otherwise, as in the case of money deposited with officers, or where funds or property were in custodia legis. It is not for this court to broaden the terms of this act, or by construction read into the act an intention which does not clearly appear.'' The following year the Legislature expressed its intent unambiguously[24] and extended the right to garnishee funds in the hands of the state and its subdivisions to salaries due public officers. This statute was applied to the salary of a district attorney in *Stockard v. Hamilton.*[25]

Several decisions have been rendered on the question of the constitutionality of such statutes. It has been broadly stated that statutes authorizing the garnishment of the salary or the wages of public officials or employees are within the legislative power.[26] A statute permitting the garnishment of the wages of municipal and county employees, which does not extend to those of the state, does not conflict with a constitutional provision against class legislation, *Cavender v. Hewitt.*[27] An Illinois statute,[28] was held unconstitutional as class legislation as it did not apply to all municipal corporations of the state.[29]

[24] New Mexico Statutes Annotated, Ch. 59, Sec. 59 127 (1929).
[25] 25 N. M. 240, 180 Pac. 294 (1919).
[26] Dunkley v. McCarthy, 157 Mich. 339, 122 N. W. 126, 17 Ann. Cas. 523 (1909); note, 22 A. L. R. 760.
[27] 145 Tenn. 471, 239 S. W. 767, 22 A. L. R. 755 (1922).
[28] Illinois Laws, 1905, p. 285.
[29] Badenock v. City of Chicago, 222 Ill. 71, 78 N. E. 31 (1906).