GARNISHMENT - Notice to a judgment debtor after general execution is not a prerequisite before issuing a writ of summons to a garnishee.

February 13, 1941

2-27

FILED

Hon. W. Oliver Rasch
Prosecuting Attorney
Jefferson County
Hillsboro, Missouri

Dear Sir:

We are in receipt of your request for an opinion, which reads as follows:

> "The Sheriff of my County has called upon me for an opinion on a question which I have been unable to decide after a rather thorough investigation of the Statute and Authority and, therefore, request an opinion from you on the matter.
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> "The Sheriff has a large number of executions to serve wherein the defendants are working for the Pittsburgh Plate Glass Company of this County. Heretofore it has been the custom of the Sheriff to merely serve summons to garnishee upon the Company but he did not serve the defendant personally. The question is, is the Sheriff required to serve the defendant personally with the execution before he serves summons to garnishee on the Glass Company?

> "This also gives rise to another question: If the Sheriff is required to serve the defendant with the execution, would service be good upon a member of his family, over the age of fifteen years, at his usual place of abode?
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> "I rather doubt whether the Sheriff is required to serve the defendant with an execution in which case he has been directed to garnish the defendant's wages but as this question is going to be of some concern to the Sheriff, I want to be sure about the matter.
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> "If you can get an opinion to me in the next week, I shall appreciate it, as the Sheriff has about one hundred executions in his possession now waiting to be served and it is going to be nearly an impossible task for him to obtain service on some of the defendants as they apparently try to avoid service."

And your supplemental request under date of January 30, 1941, which reads in part as follows:

> "The judgments on which the executions are issued and garnishment writ served are judgments that were rendered in the first instance in the Circuit Court, or judgments that were rendered by Justices of the Peace, and transcripts thereof filed in the Office of the Circuit Clerk. However, all of the executions are issued by the Circuit Clerk and all of the judgments are rendered, not only in this State but in Jefferson County.

> In all cases in which the Sheriff is interested, the judgments have first been obtained and the garnishment proceeding followed."

In the case of Ritter v. Boston Ins. Co., 28 Mo. App. 140, l. c. 147, the Court had this to say:

> "* * * 'Garnishment is one of the modes pointed out by the statute by which the writ (of execution) is executed, and it is not a new suit, but an incident, or an auxiliary, of the judgment, and a means of obtaining satisfaction of the same by reaching the defendant's credits. * * *' "

In the case of Chapman v. Yancey, 173 Mo. App. 132, l.c. 145, the Court had this to say:

> " * * * Under the statute, garnishment attempts to reach funds or property of judgment debtor, alleged to be in the hands of the garnishee. The subject-matter is that fund and its ownership. Beyond or outside of the determination of the right to that fund, the court, in that proceeding, has no jurisdiction whatever. (Connor v. Pope, 18 Mo. App. 86.) It has no right to go into any determination of the rights of the parties to anything outside of their respective rights to that fund; cannot adjust matters between them beyond the ownership of that fund. When

> it has determined to whom the fund in the hands of the garnishee belongs and has made an order carrying that determination into effect, its jurisdiction is at an end, save to enforce the order."

In the case of State v. Harris, 69 S. W. (2d) 307, l. c. 310, the Court made the following comment:

> "Garnishment proceeding, under our statutes, is strictly legal, and is but an incidental remedy to judgment, and is but a means of obtaining satisfaction of a judgment by reaching credits due to a losing defendant in the main suit. Tinsley et al v. Savage, 50 Mo. 141; Sheedy v. Second National Bank, 62 Mo. 17, 21 Am. Rep. 407; Norman v. Pennsylvania Fire Ins. Co., 237 Mo. 576, 141 S. W. 618.
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> "The right to judgment against a garnishee depends upon it being made to appear that the garnishee owes the principel debtor, and the creditor can claim no right where the debtor himself could not maintain an action against the garnishee. People's Savings Bank v. Hoppe, 132 Mo. App. 449, 111 S. W. 1190; Fenton v. Block, 10 Mo. App. 536.
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> "The issues between garnishee and plaintiff are tried as are ordinary issues between a plaintiff and defendant. Section 2529, R. S. 1929 (Mo. St. Ann. sec. 2529, p. 2537)."

In 28 C. J. 236, par. 326, the Court has this to say:

> "* * * In the absence of a statutory requirement, notice of ancillary garnishment proceedings need not be served on defendant, * * * ."

And, in Shinn on Attachment and Garnishment, Vol. 2, P. 999, we find the following:

> "* * * Where, however, a garnishment process is issued upon a judgment, i. e., in aid of an execution, it is not generally necessary that notice of the garnishment be given to the judgment-debtor."

In reading Article 5, of Chapter 8 R. S. Mo., 1939, we do not find any specific section which requires that the judgment debtor shall be given notice where a writ of garnishment is issued. However, it will be observed from reading the cases, supra, that in Missouri the ruling is that a garnishment proceedings is but an incidental remedy to judgment and is but a means of obtaining satisfaction of a judgment by reaching the credits due to a losing defendant in the main suit. In other words, it is a continuation of the original suit and there being no express statute requiring that notice be given, then it is our opinion that a notice is not required, as was said by Shinn in his works on attachment and garnishment in Vol. 2 at P. 999. The purpose of a notice is to inform the judgment debtor of his rights or credits and exemptions.

It will be noted in the statute, Section 1588 R. S. Missouri, 1939, that no wages shall be attached or garnished before personal service is had or obtained upon the judgment debtor, unless the suit be brought in the county where the judgment debtor resides, or in the county where the debt is contracted, and the cause of action arose or accrued. The Section further provides that the petition, or statement, filed in the cause and the writ or summons of attachment or garnishment shall affirmatively show the place where the debt is contracted, and the cause of action arose.

It is our view, and the view of the cases, that this Section throws a protection around the judgment debtor, where it is sought to attach wages, and, through the observance of this mandatory statute the judgment debtor would be fully apprised of the suit commenced against him in the first instance. It will also be observed that Section 1562 R. S. Missouri, 1939 provides in part as follows:

> "* * nor shall any person be charged as garnishee for more than ten per cent of any wages due from him to a defendant in his employ for the last thirty days' service: Provided, such employee is the head of a family and a resident of this state; * * * ."

It will be noted that this Section fully takes care of the judgment debtor where he is the head of a family.

We call your attention to the cases of Norvell v. Porter, 62 Mo. 309, and also Epstein v. Salorgne, 6 Mo. App. 352. These cases explain the proper method of service of the summons upon a garnishee and the proper return to be made by the sheriff.

CONCLUSION.

In conclusion, we are of the opinion that under the Missouri law, when an execution is placed in the hands of the sheriff or a writ of summons for a garnishee, that it is not necessary that the sheriff also serve the judgment debtor; for, if the original suit was properly brought, and the judgment regular in all particulars, then this would be sufficient notice to the judgment debtor, especially in view of the fact that garnishment under the Missouri statutes is strictly legal, and is an incidental remedy to judgment.

Respectfully submitted,

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APPROVED:

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