

Case No. 769.

BAKER ET AL. V. GLOVER.

{2 Cranch, C. C. 682.}<sup>1</sup>

Circuit Court, District of Columbia.

May Term, 1826.

EQUITY—INJUNCTION TO STAY EXECUTION—SURPRISE.

A court of equity will grant an injunction to stay execution upon a judgment obtained against a garnishee by surprise and will continue it till final hearing.

In equity. This was a bill [by Baker and others against Charles Glover] for an injunction to stay proceedings upon a judgment against the complainants as garnishees of Edward Smith by default, and for general relief. [Decree for complainants.]

The bill stated, that in February, 1818, the defendant Charles Glover, issued an attachment against Edward Smith, under the Maryland act of 1795, (chapter 56,) which was returned, "Laid in the hands of Elizabeth Baker, John B, Dyer, Edward Dyer, and Thomas Munroe, and summoned them as garnishees." That at the time of the service of the attachment, neither of the garnishees had any goods or chattels of Smith in their possession, and that neither of them was indebted to him. That relying on that fact, and being ignorant of the law and the proceedings of courts, they failed to appear at the return of the attachment, whereby they are informed that judgment of condemnation by default was entered against them as garnishees for \$260 and costs, at June term, 1818, and that execution thereupon is in the hands of the marshal, who is about to levy on the property of the complainants. That the proceedings at law were illegal and void, inasmuch as the judgment was rendered against one of the complainants by the name of Elizabeth, when her name was Catharine; that there is no return on the *capias* against Smith, and no short copy or the cause of action set up at the court-house door. The bill then prays an injunction, and for general relief.

An injunction was granted in vacation by Thruston, Circuit Judge. The answer denies that the complainant Baker was not indebted to Smith. It avers that the defendant believes that the proceedings at law upon the attachment were correct and proper, and that a short note of the cause of action was set up at the court-house door, which the defendant himself saw. As to that part of the bill which complains that no return was made on the *capias* against Smith, the defendant answers, that before the *capias* was

issued Smith had absconded and has not returned.

Mr. Morfit, for the defendant Glover, contended that by the rules of equity an injunction cannot be granted to stay execution upon a judgment by default *Graves v. Houlditch*, 2 Price, 147; Ham. Eq. Dig. 503. That the complainant had a complete remedy at law, under the Maryland act of 1787, (chapter 9, § 6,) by a motion to set aside ine judgment for surprise or irregularity, and to quash the execution. *Cheetham v. Tillotson*, 4 Johns. 500; 1 Johns. Cas. 429. That therefore there was no equity in the bill.

Mr. Key then moved the court to quash the execution, and to set aside the judgment at law against the garnishees rendered at June term, 1818, for irregularity. 1. Because there was no return of the *capias* against Smith. 2. Because there was no short note set up at the court-house door. 3. Because there was no evidence by which “to make appear to the court” what “goods, or chattels, or credits of the defendant were in each respective garnishee’s hands,” according to the provisions of the 4th section of the act of Maryland, 1715, (chapter 40.)

THE COURT ordered the injunction, and the motion to set aside the judgment and quash the execution, to be continued till the final hearing upon the cause in equity.

NOTE. Glover died, and the cause was abated.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]