

Case No. 774

BAKER v. MIX.

[2 Cranch, C. C. 525.]¹

Circuit Court, District of Columbia.

Dec. Term, 1824.

GARNISHMENT—ISSUE JOINED BETWEEN PLAINTIFF AND
GARNISHEE—ENTITLED DEPOSITIONS.

When the issue is joined between the plaintiff and the garnishee, in behalf of himself and his principal, the depositions must be entitled as of a suit between the plaintiff and the garnishee, and not between the plaintiff and the principal defendant.

Attachment, [by John W. Baker against Elijah Mix, garnishee of John Bulkley, surviving partner of John Bulkley & Co.,] under the Maryland act of 1795, c. 56. The garnishee appeared and pleaded, 1st. That the said John Bulkley & Co. had fully performed the covenant on their part; upon the replication to which plea issue was joined. 2d. That he, the garnishee, had no effects of the principal debtor in his hands; upon the replication to which, issue was also joined.

At the trial of these issues, Mr. Marbury, for the defendant, offered in evidence a deposition, taken under the act of congress, in a suit in which John W. Baker was plaintiff, and John Bulkley was defendant.

Mr. Redln, for the plaintiff, objected to the reading of the deposition, because it was not taken in this suit, which is between Baker and Mix and not between Baker and Bulkley. *Smith v. Coleman*, [Case No. 13,029,] In this court, at April term, 1821, in this county, and *Peyton v. Veitch*, [Id. 11,057.] at November term, 1816, in Alexandria.

Mr. Marbury, in reply. By the 4th section of the act of 1795, c. 56, "the garnishee may plead, in behalf of the defendant, such plea or pleas as the said defendant might or could do if he had been taken by the sheriff under the writ of *capias ad respondendum* issued as aforesaid, and had accordingly appeared to the same." When the garnishee thus pleads in behalf of the principal, it becomes substantially a suit between the plaintiff and the principal, and may truly be entitled as such. The suit was originally brought against the principal, and was so entitled until the garnishee appeared; and if perjury were committed upon the trial, it might be averred in the indictment, and proved to have been in an action between the plaintiff and the principal. Although the garnishee has pleaded for himself as well as for his principal, the issue upon the plea for the principal is, in effect, a suit between the plaintiff and the principal, and may be averred to be such. *Dale v. Beer*, 7 East, 333.

THE COURT (THRUSTON, Circuit Judge, absent) thought that Bulkley, not having appeared, could not be considered as a party in the cause, and rejected the deposition. [See *Baker v. Mix*, Case No. 775.]

¹ [Reported by Hon. William Cranch, Chief Judge.]