

Case No. 4,387.

ELLCOTT v. SMITH.

[2 Cranch, C. C. 543.]¹

Circuit Court, District of Columbia.

Dec. Term, 1824.

GARNISHMENT—ACT MD. 1795, CH. 56.

If the garnishee in an attachment under the Maryland act of 1795, c. 50, is only one of the members of a morcantile company indebted to the defendants, he cannot be chargeable alone, as garnishee; nor can the garnishee be charged upon interrogatories, unless he admits that he is indebted to the defendant.

Attachment under the Maryland act of 1795, c. 56.

CRANCH, Chief Judge (THRUSTON, Circuit Judge, doubting). The garnishee, in answer to interrogatories, says that he is one of the firm of "The Georgetown Importing and Exporting Company," and that by reason of certain losing and disadvantageous sales of the property of that company, by the defendants, Lanahan & Bogart, there then remained, on the books of the said defendants, a balance against the said company of \$379.74, as he has been informed by the said defendants, and believes to be the fact; which balance they have claimed to have allowed them in the settlement of their accounts with the said company. He further says, that he has tendered to the defendants, L. & B., an equal proportion, with the other creditors of the said company, of such portion of the said company's funds as was held to secure his own individual claims. The question is, whether upon this answer the court can render judgment against Mr. Smith, the garnishee. We think we cannot. He is not individually and solely indebted to the defendants. If they had brought suit against him he might have pleaded in abatement that there were other partners not named in the writ. But his answer does not even admit that the company is indebted to the defendants; it only admits that they claimed to have the balance of accounts upon their books, allowed in the settlement. We are inclined to think that all the partners of the company should have been made garnishees. No one of the company should be charged unless upon his own oath or plea. However this may be, we think the answer does not admit a balance due by the company to the defendants.

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