

Case No. 5,055.

FRANKLIN v. WARD ET AL.

{3 Mason, 136.}¹

Circuit Court, D. Rhode Island.

Nov. Term, 1822.

GARNISHMENT.

A judgment debtor is not liable to be attached as a garnishee under the foreign attachment act of Rhode Island.

[Cited in *Smith v. Miln*, Case No. 13,081; *Thomas v. Woolridge*, Id. 13,918; *Henry v. Gold Park Min. Co.*, 15 Fed. 650.]

[Cited in *Burnham v. Folsom*, 5 N. H. 567; *Williams v. Boardman*, 91 Mass. 571.]

This suit was removed from the state court under the act of congress. The garnishees made a disclosure in substance as follows: At September term, 1821, of the supreme court of Rhode Island, Ward & Goodale recovered judgment against them for \$1,378.87 damages, and \$61.59 costs of suit. Previous to the issuing of the execution on that judgment, the original writ in the present case was served on them. Afterwards execution issued on the judgment returnable to the next term, and on that execution they paid \$193.34 in part of the judgment; and the supreme court ordered execution to stay for the residue of the judgment to abide the decision of the circuit court in this suit. The sum of \$195.34 was the amount of the counsellor's and attorney's fees in the original action of Ward & Goodale against them. That previous to the judgment the garnishees had entered into arbitration bonds with Ward & Goodale to refer the cause, and to pay in a certain manner stated in the bonds the sum for which judgment should be entered upon the award of the referees. The question for the court was whether the garnishees were entitled to be discharged upon a disclosure which depended on this point; whether a judgment debt was attachable under the foreign attachment act of Rhode Island.

Thomas Burgess, for garnishees.

Mr. Tillinghast for plaintiff.

The former cited *Laws R. I. Dig. 1798*, p. 208; 2 Mass. 91; 3 Mass. 121; 4 Mass. 238; 7 Mass. 152; 4 Durn. & E. [4 Term R.] 313, note. The latter cited *Pollard v. Dwight* 4 Cranch [8 U. S.] 421.

STORY, Circuit Justice. By the foreign attachment act of Rhode Island (*Dig. 1798*, p. 208, § 4), if the garnishees are discharged upon their disclosure, the suit is to be dismissed against the principal, as well as against the garnishees. The question is whether a judgment debt on which execution may presently issue, is liable to be attached on a foreign attachment. My opinion is, that it is not. The cases cited from the Massachusetts Reports are directly in point upon the construction of an act of that state, substantially like that of Rhode Island. My judgment proceeds not upon these cases alone; but upon the

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principles which they contain, which seem to me founded in law and general justice. Suit dismissed.

¹ [Reported by William p. Masson, Esq.]