

Case No. 6,653.

HOMANS v. COOMBE.

[2 Cranch, C. C. 681.]¹

Circuit Court, District of Columbia.

May Term, 1826.

ATTACHMENT—EXECUTION—JUDGMENT—SURPRISE.

The court will set aside a judgment against the garnishee, obtained at a former term by surprise, and will quash the execution thereon issued.

HOMANS v. COOMBE.

This was an attachment issued by way of execution upon a judgment against Mr. Zantzinger, and the marshal returned that he had "attached credits in the hands of Griffith Coombe, and summoned him as garnishee in the presence of" D. B. and B. O. T., July 28, 1824. At the return of the writ, Mr. Coombe, the garnishee, being called, and not appearing, judgment of condemnation was rendered against him at December term, 1824, for the whole amount due from the defendant, Mr. Zantzinger. The writ of attachment issued under the act of assembly of Maryland of 1715 (chapter 40) does not state any particular sum as being in the hands of the garnishee, nor does it even name a garnishee. It commands the sheriff to attach the goods, chattels, and credits of the defendant to the value of the debt, and have them before the court at the return of the writ, to be condemned to, and for the use of, the plaintiff [Daniel Homans], unless the defendant shall show cause to the contrary; and to make known to the person in whose hands or possession the goods, chattels, and credits shall be attached, to be and appear at the court, at the return day of the writ, to show cause why the same should not be condemned, and execution thereof had as in other cases of recovery and judgment. By the 4th section of the act it is provided, "that no sheriff shall levy, by way of execution as aforesaid, against the said garnishee or garnishees, any more than the plaintiff's debt and costs, nor against any garnishee or garnishees, than what the said plaintiff in the said action shall make appear to the said respective courts, to be of the said goods, chattels, and credits of the said defendant in each respective garnishee or garnishees' hands, together with such costs only as the garnishee or garnishees shall put the plaintiff to, by denying him or themselves to be indebted to such defendant, and contesting the same." At the time of the judgment against Mr. Coombe, the garnishee, there was no evidence before the court to make appear what goods, chattels, or credits were in his hands.

Mr. Key now moved to set aside the judgment against Mr. Coombe, as having been obtained irregularly and by surprise; and produced the affidavit of Mr. Coombe, denying that he ever had any money or property of the defendant in his hands or possession; that knowing that fact, and believing that no person could aver or prove that he had, and that no judgment could be rendered against him without proof, he thought it unnecessary to take any steps for his defence, and the subject passed out of his mind, &c. There were also other corroborating affidavits.

THE COURT, at a subsequent term, set aside the judgment against the garnishee, as having been obtained by surprise, and quashed the execution.

[In Case No. 6,634, in an action against the garnishee, the plaintiff was nonsuited.]

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