

Case No. 7,796.

KING V. GORSLINE ET AL.

[4 Cranch, C. C. 150.]¹

Circuit Court, District of Columbia.

May Term, 1831.

GARNISHMENT—DRAFTS DRAWN BEFORE ATTACHMENT—PRIORITY OF PAYMENT.

Drafts drawn by the defendant upon his debtor before attachment are entitled to priority of payment out of the fund in the hands of the garnishee, although the garnishee has no notice of such drafts until after attachment served.

[Cited in *Miller v. Hubbard*, Case No. 9,574.]

[Richard] Gorsline owed, [Thomas] King, and the Chesapeake and Ohio Canal Company owed Gorsline. King issued his attachment, which was served on the canal company on the 20th of August, 1830. The garnishee pleaded nulla bona, and it appeared in evidence that before the issuing of the attachment Gorsline had drawn upon the canal company, in favor of the Farmers' and Mechanics' Bank, for sundry sums of money advanced to him by them on the faith of those drafts, but the canal company had no notice of them until the day after the service of the attachment. If they were entitled to priority, they exhausted the whole fund.

Mr. C. Cox, for the Farmers' & Mechanics' Bank, cited 1 Chit Bills, 1; *Yeates v. Groves*, 1 Yes. Jr. 280; *Brooks v. Rogers*, 1 H. Bl. 640; *Wakefield v. Martin*, 3 Mass. 558; Bac. Abr. 260, "Custom of London"; *Stevenson v. Pemberton*, 1 Dall. [1 U. S.] 3; *Wood v. Roach*, 2 Dall. [2 U. S.] 180; *Welch v. Mandeville* [Case No. 17,371], in this court; Serg. Attachm. 80, 81.

Mr. Wallach, for plaintiff, contended that a bill drawn is not an assignment of the fund, against attaching creditors, until notice to the drawee. *Mandeville v. Welch*, 5 Wheat. [18 U. S.] 277; *Steuart v. West*, 1 Har. & J. 537.

THE COURT (nem. con.) was of opinion that the drafts of the defendant upon the garnishees were an equitable assignment of so much of the funds of the debtor in their hands, and those drafts having exhausted the whole fund, the court quashed the attachments. The question submitted to the court was whether the F. and M. Bank had a priority, by reason of the drafts of Gorsline, received by the bank, but not notified to the canal company, the drawees, until after the attachments served.

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