

PANCOST V. WASHINGTON.

{5 Cranch, C. C. 507.}¹

Circuit Court, District of Columbia. Nov. Term, 1838.

ATTACHMENT—DEATH OF
DEFENDANT—DISSOLUTION.

An attachment under the Maryland act of 1795, c. 56 [1 Dorsey's Laws, p. 320], is dissolved by the death of the principal defendant, and the appearance of his administrator.

{This was an action at law by Mary Pancost against the corporation of Washington, garnishee of Elias Gurnaer.} Attachment under the Maryland act of 1795, c. 56.

Elias Gurnaer, the principal debtor, having died since the last term, Mr. Redin moved the court that the appearance of the administrator may now be entered and the attachment be dissolved. He contended that the object of the attachment was only to compel an appearance; and that where, by the act of God, or of the law, the defendant cannot give bail and appear, the attachment should be discharged. The defendant, while living, had a right to appear, upon giving bail, which would have dissolved the attachment. But his administrator has a right to appear without bail, and the appearance dissolves the 1084 attachment. The attachment, and the action upon the *capias*, cannot be going on at the same time. The attachment did not transfer the property from Mr. Gurnaer; the attached effects would have remained his property until a sale under a judgment of condemnation, and did remain his property until his death, when they vested in his administrator as assets for which he is accountable in the due course of the administration. No judgment had been rendered in the cause. *Nicholl v. Savannah Steamship Co.* [Case No. 10,225], in this court, June

term, 1820; *Davis v. Marshall* [Id. 3,641], July term, 1804; *Serg. Attachm.* 133; *Fisher v. Lane*, 3 Wils. 297.

C. Cox and Mr. Bradley, contra. The defendant could not appear and give bail after the return of the *capias ad respondendum*. The object of an attachment is not to compel an appearance, but to enable a creditor to obtain satisfaction out of the property of his absent or absconding debtor. *Chase v. Manhardt*, 1 Bland, 344. The garnishee has pleaded *nulla bona* for himself and *non assumpsit* for the principal. This gives the plaintiff a lien on the funds in the hands of the garnishee.

THE COURT (THRUSTON, Circuit Judge, contra) permitted the appearance of the administrator of the principal debtor without bail, and dissolved the attachment.

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

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