STATE, USE REIDER *vs.* LAWSON ET AL.

Treasury notes of the United States are subject to levy and seizure by attachment under our laws.

Writ of Error to the Circuit Court of Pulaski County.

DEBT, on the official bond of Lawson as sheriff of Pulaski. The principal facts in the case were, that John Charles who had upon his person about $1800 in Treasury notes of the United States, was arrested here and taken into custody by Lawson upon an attachment out of chancery for contempt—a *ca. sa.* was also then issued against him and placed in the hands of Lawson for upwards of a $1000, upon a judgment before obtained against him. Reider on the same day sued out two several attachments against Charles amounting to upwards of $500, and placed them in Lawson's hands with directions to seize the treasury notes. Watkins who was the solicitor of Reider, and also controlled the *ca. sa.* as atto. directed Lawson to satisfy the *ca. sa.* out of the treasury notes, and levy the attachments on the residue. Lawson satisfied the *ca. sa.* but suffered Charles to appropriate the residue; and the question was whether Lawson had made himself liable as sheriff for not seizing

under the attachment, upon an agreed case in substance as above. The court, Clendenin judge, determined that he was not liable. Reider brought error.

WATKINS & CURRAN, for the plaintiff. The plaintiff in error submits that choses in action are subject to attachment under the language of the statute "lands, tenements, goods, chattels, moneys, credits and effects," by analogy with the meaning of those words when used in reference to our administration system and in proceedings in bankruptcy and insolvency. Although not subject to execution, the very object and policy of the law allowing attachments, require that they should be subject to attachment because after judgment, the same end can be attained by process of garnishment or a creditor's bill and the reason does not exist. And the law provides for the sale of the property or effects attached under the order of the court.

The argument for the defendants is that choses in action cannot be sold under execution and that nothing can be attached, but what can be sold under execution. We submit that where the statute awards an execution upon the judgment in attachment, it means a *fi. fa.* against the property generally of the defendants, for so much as remains unsatisfied by the sale of the effects attached. According to our statute bank stock &c. and notes or evidences of debt of any moneyed corporation of this or any other State are expressly made subject to execution: and we submit further that treasury notes, although drawing a nominal interest, come within the reason and spirit of the statute, and are subject to execution, as much so as the notes of any moneyed corporation. The argument for the defendants is technical and may be answered by a technicality. Treasury notes are not choses in action; because there is no mode whatever of suing the government upon them.

Wherever the evidence of debt is negotiable by endorsement or delivery—not subject to discounts or offsets, or where it circulates as currency, and where, as in this instance, the State or Government issuing it, cannot be garnisheed as the debtor of the holder, public policy and the ends of justice seem to require that the evi-

dence of debt itself should be subject to attachment as other credits and effects of the defendant.

PIKE & BALDWIN, contra. Only two questions present themselves: first, could Lawson by law levy on the treasury notes the attachments of Reider? Second, under circumstances, could he attach the gold?

As to the first; the statute (Rev. St. 377,) expressly defines what is subject to levy. It does not include treasury notes. *Field vs. Lawson,* 5 *Ark.* 376, conclusively settles the question. Choses in action are not subject to levy at common law, and the levy on treasury notes is not authorized by statute. Nor can anything be levied on by attachment which cannot be sold under execution Nothing but lands, tenements, goods, chattels, credits and effects can be attached. A promissory note could not be attached, but its maker might be garnisheed. How could a chose in action be sold? Nothing but goods of a perishable nature can be sold by order of court; and everything else must be sold under execution. Consequently if choses in action cannot be sold under execution they cannot be attached.

As to levy on choses in action. See *Handy vs. Dobbin,* 12 *J. R.* 220. *Denton vs. Livingston,* 9 *J. R.* 96. *Knight vs. Criddle,* 9 *East* 48. Nothing that cannot be sold, can be taken in execution. *Francis vs. Nash, Cas. Temp. Hard.* 53.

As to the second point. The *ca. sa.* came first to hand and was levied on the money. The sheriff was bound to account for that as so much collected. *Rev. St.* 377. Consequently as there could be no residuum, as in case of property of uncertain value there was nothing to attach afterwards, and the attachments could not be levied on the gold. The *ca. sa.* appropriated the whole of that. Then, as the attachments were returnable on the 27th May, and the *ca. sa.* on the 28th and the latter was not satisfied until the latter day, the gold was not released from the levy, until after the return day of the attachments. The sheriff therefore is not liable for not attaching it: because, he could not do it.

Even where a surplus of the defendant's money remains in the

officer's hands, he cannot levy on it with another execution. It is his duty to pay it over immediately to the defendant. *Fieldhouse vs. Croft,* 4 *East* 510. *Knight vs. Criddle,* 9 *East* 48. *Padfield vs. Brine,* 7 *Moore* 127. 3 *B. & B.* 294.

Money and bank notes could not be taken in execution at common law. *Knight vs. Criddle, ub. sup. Williams vs. Rogers,* 5 *J. R.* 163.

No property can be attached except what can be taken under execution. *Handy vs. Dobbin,* 12 *J. R.* 220.

OLDHAM, J. It was obviously the intention of the legislature to subject every species of property either by direct seizure under the attachment, or by summoning the debtor of the defendant as a garnishee, to the payment of the demand of the plaintiff. The writ of attachment commands the sheriff or other officer charged with its execution "to attach the defendant by all and singular his goods and chattels, lands and tenements, credits and effects. *Rev. Stat. ch.* 13, *sec.* 6. These general terms are more extensive in their meaning and import than the twenty-third section under the head of "Executions" and will include treasury notes of the United States in the possession of the defendant.

Upon the state of facts agreed upon the circuit court should have rendered judgment in favor of the plaintiff, and we therefore reverse the judgment and remand the cause with directions that judgment be rendered accordingly.