

CROSS vs. WILLIAMS, AD'R.

Where, in an action by attachment, the plaintiff dies after judgment against the defendant, but before judgment against a garnishee, and his administrator makes himself a party, he cannot take judgment against the garnishee until he revives the original judgment.

Writ of Error to the Circuit Court of Hempstead County.

In May, 1833, Nathaniel M. Motby brought an action of assumpsit, by attachment, against Edward Peacock, under the Territorial attachment law, and summoned Edward Cross as garnishee. At the May term, 1834, Motby took judgment against Peacock. Allegations and interrogatories were filed against Cross as garnishee; he answered, and the cause was continued from term to term, until April, 1842, when the death of Motby was suggested, and the case revived in the name of Williams, as his administrator, who obtained judgment against Cross as garnishee, without reviving the original judgment against Peacock. Execution afterward issued against Cross on the judgment, and he applied to the court to quash it; the court refused, and he brought error.

WATKINS & CURRAN, for plaintiff.

RINGO & TRAPNALL, contra.

OLDHAM, J. The suit against the garnishee, under our present attachment law, as well as the territorial law, is but an incident to the original attachment suit. The plaintiff must recover a judgment against the defendant in the latter proceeding, to authorize one in his favor in the former. The process of garnishment is but a means to enforce the payment of the debt due by the defendant in the attachment suit.

An executor or administrator cannot enforce the execution of the

judgment rendered during the life-time of the testator or intestate, without reviving the judgment in his name, as the representative of the deceased judgment creditor. And we conceive that the administrator in the present case, was not authorized to enforce payment of the judgment of his intestate, against Peacock, by means of the garnishment against Cross, without first reviving the original judgment. That judgment had abated by the death of the plaintiff, and consequently there was no judgment in force, to give validity to the proceedings of the administrator against the garnishee. The proceedings against the garnishee subsequent to the death of the plaintiff for the reasons stated, were irregular and erroneous, for which the judgment must be reversed.
