McMEEKIN ET AL. *vs.* THE STATE.

A demurrer to a writ of garnishment goes to so much of it as answers the purpose of a declaration and extends to the allegations and interrogatories which are an amplification of that part of the writ.

The State cannot be garnisheed for the salary of a public officer.

Writ of Error to Pulaski Circuit Court.

On the 24th of December, 1847, the plaintiffs in error sueed out of the Pulaski Circuit Court a writ of garnishment against the State of Arkansas, in substance as follows:

"The State of Arkansas, &c.: [usual caption and address.] Whereas, John McMeekin, D. S. Slaughter, and Thomas W. Hynes, as administrators, with the will annexed, of William R. Hynes, deceased, obtained a judgment in the Pulaski Circuit Court, on the 30th day of November, A. D. 1842, in an action of

debt against William Conway B., for the sum of three hundred and twenty-four dollars and fifty-four cents, with interest thereon at six per cent. per annum from the 25th of November, A. D. 1842, until paid, together with costs, &c., which judgment still remains unsatisfied; and whereas, it is alleged by the plaintiffs that they have reason to believe that the State of Arkansas has in her hands and possession goods and chattels, moneys and effects belonging to the said defendant: Now, therefore, you are hereby commanded to summon the said State of Arkansas, *if she be found within your bailiwick,* to appear before the judge of our Circuit Court," &c., "to answer what goods, chattels, moneys, credits and effects she may have in her hands or possession belonging to said defendant, to satisfy the judgment aforesaid, and also to answer such further interrogatories as may be exhibited against her, and that," &c., &c.

The sheriff served said writ upon E. N. Conway, Auditor of Public Accounts, on the 24th December, 1847.

At the return term (April, 1848,) the plaintiffs filed allegations and interrogatories in accordance with the statute.

They alleged that the State was, on the 24th of December, 1847, justly indebted to the said William Conway B. in the sum of $375; and at other times, between then and the time of filing the interrogatories, other sums, making an aggregate indebtedness of $1,125, alleging specific times and amounts, and required the State to answer if she was not so indebted to said Conway B., and if not, how otherwise. Plaintiffs also propounded the following specific interrogatories to the State:

"1st. Has the said William Conway B. served as judge of the supreme court, from the 1st of October, 1847, until the 17th of April, 1848? And was he not, for his said services, entitled to have and receive of, and from, said State, a hire, compensation or salary, at the rate of $1,500 per year, payable to him by said State quarterly?

"2d. Is the State of Arkansas debited or chargeable with any sum of money for, and in favor of, said William Conway B., as due or payable to him, or otherwise, for his services or salary as

one of the judges of the supreme court, or on any other account whatsoever; or has she, at any time between the said 24th day of December, 1847, and the 17th day of April, 1848, been debited or chargeable to said Conway in any sum of money whatsoever, and if yea, when and in what sum or sums, and the value thereof?"

The Attorney General filed a demurrer to the writ of garnishment, and assigned as causes of demurrer:

"1st. That the State cannot be sued except in the manner prescribed by law.

"2d. That the State, nor any officer of hers, can answer said writ or allegations.

"3d. That the salary of a public officer cannot be garnisheed, especially of a judicial officer, under the constitution, and upon grounds of public policy."

The court (the Hon. WILLIAM H. SUTTON presiding) sustained the demurrer, and plaintiffs brought error.

RINGO & TRAPNALL, for the plaintiffs. The demurrer in this case is to the writ, by which the defendant was summoned to answer what goods, &c., belonging to the judgment debtor, she had in her possession, without charging an indebtedness to him as judge: and the only question is, whether the property or money of a judgment debtor, held by the State, or debts due to him from the State, can be subjected to the payment of his debts. See *State, use Reider vs. Lawson et al.*, 2 *Eng.* 394. *Digest, chap.* 17, *secs.* 6, 8, 9; *chap.* 78, *secs.* 1-9.

It is not alleged in the writ or allegations that the indebtedness of the State to Conway, B. was for a debt due to him as judge, the court then must adjudicate this cause as if the debt was due to him as a private citizen.

But, if the judgment debtor was a judge of the supreme court, there is no exemption in favor of such officer in the statute, which is in the most general terms and embraces all cases. Public policy, so far from protecting a judge in the refusal to pay his debts, ought to require of him, as an exemplar to the private

citizen, the most rigid observance of the obligations of morality and common honesty, as well as the general laws of the land.

Watkins, Att. Gen. Though the language of the statute is broad, this court has found it necessary in construing it to restrict its general language, upon grounds of public policy, and because it would interfere with other statutes equally imperative and defeat their operation. So this court has held that executors and administrators are not liable to be garnisheed, (*Thorn & Robins vs. Woodruff*, 5 *Ark.* 55. *Fowler vs. McClelland*, 5 *Ark.* 188;) nor a judgment debtor, (*Trowbridge vs. Means*, 5 *Ark.* 135. *Tunstall vs. Means*, 5 *Ark.* 700;) and that the writ must be confined to the county in which the judgment was rendered. *Pike vs. Lytle*, 1 *Eng.* 212. *Allen vs. State Bank*, 103.

So it is held that a sheriff, or other public officer, cannot be garnisheed. *Conant vs. Bicknell*, 1 *Chip.* 50. *Duboise vs. Duboise*, 6 *Cowan*, 494. *Chealy vs. Brewer*, 7 *Mass.* 259. *Brooks vs. Cook*, 8 *Mass.* 246. *Barnes vs. Treat*, 7 *Mass.* 271. *Pickquet vs, Swan*, 4 *Mason*, 443.

The State is not a "person" within the meaning of the statute; and the writ ought not to be allowed against her on the grounds of public policy.

Scott, J. It is insisted that, inasmuch as the demurrer, interposed by the State in this case, in its terms, is to the writ, so much of the record as presents the allegations and interrogatories is excluded from the view of the court. We entertain a different opinion. The demurrer looks through the entire record, and presents it all for examination and judgment. In this proceeding, as in the proceeding by scire facias, the writ of garnishment having the double nature of a writ and of a declaration, (it being the office of the allegations and interrogatories to amplify and complete it in its latter nature,) the demurrer when, as in this case, interposed in terms to the writ, will be intended as interposed to so much of the writ only as is in the nature of a declaration. Any other intendment would be absurd, as it is

as incompetent for a demurrer to reach a writ in its purely technical sense as for a plea in abatement to perform the office of a demurrer in reaching the insufficiency of the pleadings in the statement of the cause of action.

Looking, then, to the whole record, the question is distinctly presented whether or not the salary due from the State to one of her public officers, can, by garnishment, be seized before being paid to him, and appropriated to the payment of his judgment debts. And this seems to be absolutely forbidden by considerations of public policy. In every enlightened community public policy must ever be paramount to individual convenience and private interest. And it cannot be doubted that the most efficient administration of the government in general, and the free course of the stream of justice in the tribunals, are the very highest of these considerations. To interpret the will of the legislature as in conflict, in any degree, with these great public objects, could rarely, if ever, be done; as to do so would be abhorrent to every legal idea of civil liberty. And that the proper and efficient administration of the State government, in all its departments, would be endangered by the establishment of the doctrine contended for by the plaintiffs in error, cannot, for a moment, be doubted, as it would, at all times, in its practical operation, be embarrassing, would frequently be mischievous, and, under some circumstances, might prove fatal to the public service.

If the statute of garnishments, and that providing for the conduct of suits against the State, were to be construed in a condition of isolation, without any regard to the body of the law, and with reference alone to their apparent provisions, there would be much plausibility in the position of the plaintiffs in error; but as they are but an inconsiderate part of an harmonious body of laws, all looking to one great paramount object, this mode of interpretation cannot for a moment be tolerated. Nor are we without the most persuasive authority for the ground we occupy. The unbroken current of decisions in England, and in the State and federal courts of the United States, as to the doctrines of the law analogous, and, for the most part, identical in principle, and

even so to the very letter in many instances, have uniformly excluded money, and other effects, in the hands of executors and administrators, and in the hands of all officers of the law, from the operation of such enactments, although in their general terms these would seem to have been included. (*Conant vs. Bicknell,* 1 *Chip.* 50. *Duboise vs. Duboise,* 6 *Cowen,* 494. *Chealy vs. Brewer,* 7 *Mass.* 259. *Barnes vs. Treat, ib* 271. *Brooks vs. Cook,* 8 *Mass.* 246. *Pickquett vs. Sloan,* 4 *Mason,* 443. 1 *Root,* 451. 4 *Day,* 87, 96. 1 *Conn.* 385. 4 *Greenl.* 533.) And to the same purport has this court gone in several adjudications, as cases have arisen. 5 *Ark.* 55. *Ib.* 188. *Ib.* 135. *Ib.* 700. 1 *Eng.* 212. 2 *Eng.* 103.

In the supreme court of the United States, at the January term, 1846, in a case where a purser of the navy had been garnisheed, and seamen's wages, for debts due by them, had been attempted to be attached in his hands for their satisfaction, Mr. Justice McLean, in delivering the opinion of that court, says: "The important question is, whether the money in the hands of the purser, though due to the seamen for wages, was attachable. A purser, it would seem, cannot, in this respect, be distinguished from any other disbursing agent of the government. If the creditors of these seamen may, by process of attachment, divert the public money from its legitimate and appropriate object, the same thing may be done as regards the pay of our officers and men of the army, and of the navy, and also in every other case where the public funds may be placed in the hands of an agent for disbursement. To state such a principle is to refute it; no government can sanction it. At all times it would be found embarrassing, and, under some circumstances, it might be fatal to the public service. The funds of the government are specifically appropriated to certain national objects, and if such appropriation may be diverted and defeated by State process, or otherwise, the functions of the government may be suspended. So long as money remains in the hands of a disbursing officer, it is as much the money of the United States as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the

fund cannot, in any legal sense, be considered a part of his effects. The purser is not the debtor of the seamen. It is not doubted that cases may have arisen in which the government, as a matter of policy or accommodation, may have aided a creditor of one who received money for public services; but this cannot have been under any supposed legal liability, as no such liability attaches to the government or to its disbursing officers." And accordingly the cause was remanded to the State of Virginia, where it originated, with instructions for its dismissal.

This case, although different in its facts from that at bar, and the remarks of Judge McLean, which we have quoted, so firmly present the general considerations which prevent the establishment of the doctrine contended for by the plaintiffs in error, that we deem it unnecessary to examine and array the other considerations of minor import appropriately suggested by the Attorney General, some of which have been in principle sustained by the decisions of the State courts. 1 *Ala. Rep.* 398. *Ib.* 754.

Therefore, finding no error in the proceedings of the court below, its judgment must be affirmed with costs.