Defendant read in evidence a deed exhibited with his answer, showing his title to the land; and also a transcript of the proceedings and judgment before the Justice of the Peace in the attachment suit.

Declarations of law were made by the Court, to which defendant excepted, and other declarations were moved by him, some of which were refused, and he excepted; which will be noticed below.

The Court found for plaintiff, and rendered judgment in his favor for possession of the land; defendant moved for a new trial, which was refused, and he took a bill of exceptions, and appealed to this Court.

OPINION.

I. "A Justice of the Peace shall not have jurisdiction where a lien on land, or title or possession thereto is involved." *Constitution of* 1874, *Art. VII, sec.* 40. 1. Attachment of lands before J. P.

The act of 23d January, 1875, (acts of 1874-5, p. 111) provides that when a Constable to whom an attachment is directed by a Justice of the Peace, can find no personal property of defendant, he shall levy the writ upon any lands, tenements, town lots, equity of redemption, &c., belonging to defendant, subject to execution, and make return, describing the property levied upon. *Sec.* 1.

Section 2d of the act provides that if plaintiff obtain judgment in the suit in which land, &c., has been attached, he may file a transcript of the proceedings and judgment of the Justice in the office of the Clerk of the Circuit Court, which, when entered on the judgment docket, shall have the same force and effect as a judgment rendered in the Circuit Court, upon which an order of sale may be issued by the clerk, directed to the Sheriff, under which the attached property may be sold, &c.

The act makes no provision for the Justice of the Peace

issuing the attachment, and rendering the judgment, to make any adjudication as to a lien upon, or the title to, or possession of the land attached. It provides for a convenient and safe mode of subjecting lands of non-resident debtors, &c., to satisfaction, by attachment, of debts within the jurisdiction of Justices of the Peace.

The act is not in conflict with the clause of the Constitution quoted above, or any other.

II. It appears that the attorneys ad litem appointed for appellant, Bush, by the Justice of the Peace in the attachment suit, asked for an appeal to the Circuit Court from the judgment of the Justice, which was granted on condition that the affidavit required by law should be filed.

2. Appeal bond necessary to stay execution.

It does not appear that the affidavit was filed, but if it was, and if the attorneys *ad litem* could take an appeal for the non-resident defendant, without authority from him, yet no appeal bond was given, and hence no stay of execution, (*Gantt's Dig., sec.* 3822, 96), and the plaintiffs in the attachment suit were not prevented by such grant of appeal from proceeding to execute the judgment by sale of the land in the mode provided by the act of January 23d, 1875; and the Court below correctly declared the law so to be.

III. The second section of the act of 23d January, 1875, provides that "no sale (of the land attached) shall be made until the plaintiff shall execute bond to the defendant in the manner now prescribed by law."

3. Bond must be filed before sale of land.

The bond so required to be given must be that provided for by *section* 4727, *Gantt's Dig.,* where the defendant has been constructively summoned, and has not appeared, and who is allowed the right to a re-trial at any time within five years after judgment, by section 4732.

The Court below declared the law of this case to be that it was not necessary for the plaintiffs in the attachment suit to execute bond to defendant, Bush, because he appeared by

the attorneys Freeman & Johnson, appointed for him by the Justice of the Peace, who entered a general denial of the account, and demanded a jury.

4. Attorney ad litem cannot enter defendants appearance.

This Court has decided that an attorney *ad litem* appointed under *section* 4727, *Gantt's Digest*, for a defendant constructively summoned, cannot by virtue of such appointment enter the appearance of defendant so as to give the Court jurisdiction of his person. *Henry vs. Blackburn,* 32 *Ark.,* 445.

It was not the duty of the attorneys *ad litem,* by virtue of their appointment by the Justice, to enter a general denial of the account, and demand a jury trial, and they could not thereby waive any legal right of defendant, without authority from him.

When a regular attorney, who is a licensed and sworn officer of a Court, and acting in the line of his profession, appears for a party, his authority to represent him will be presumed, until properly questioned. *Tally vs. Reynolds,* 1 *Ark.,* 99; *Cartwell vs. Menifee,* 2 *Ib.,* 356.

So here if the transcript of the proceedings before the Justice of the Peace, had merely shown that on the day fixed for trial, Freeman & Johnson appeared as attorneys for Bush, and entered a denial of the account sued on, and demanded a jury trial, their authority to represent him might be presumed. But the transcript shows that they were appointed attorneys for him by the Justice of the Peace, and that they accepted the appointment, and the presumption is that they acted by virtue of that appointment, in the absence of any showing or indication that they had authority from Bush.

Section 41, *Chapter* 17, *of Gould's Digest,* required a bond of indemnity to be executed to the defendant in attachment, before execution could issue, or his property be sold. In *Rust vs. Reives,* 24 *Ark.,* 359, the Court said it was unques-

tionably law, that no execution could be awarded, or property sold until such bond was executed. But as the Court had ordered an execution, it would be presumed that the law had been complied with.

Here there is no room for presumption, for on the trial of this case appellee admitted that no bond had been executed.

5. Statute to be strictly followed.

The proceedings by attachment against the property of a non-resident is Statutory, out of the course of the common law, and must be strictly followed to make a valid sale of property. The language of the Statute in question is peremptory: "No sale shall be made until the plaintiff shall execute bond to the defendant," &c.

In this case the plain requirement of the Statute was disregarded, and we are not at liberty to treat it as merely directory, and hold the sale of the land attached to be valid.

Reversed, and remanded for a new trial.