

given the second semester. Both courses are required for second-year students enrolled under the four-year law course.

Mr. Arno C. Becht, who was last year a member of the faculty of the University of Georgia School of Law, has been appointed Assistant Professor of Law for 1940-1941. Mr. Becht will teach courses in Labor Law, Sales, and Legislation, and will also act as Faculty Advisor to the Washington University Law Quarterly.

The Law School has for the academic year 1940-1941 a total enrollment of 158, with an entering class of 58. Of the entering students, fourteen are taking the four-year law course which was initiated last year for those students presenting only two years of college work. The three-year law curriculum continues for the benefit of those students having a degree or presenting at least three years of college credit.

The total number of bound volumes in the Law Library has now reached 52,106, including some very welcome gifts received during the past year.

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## NOTES

### GARNISHMENT IN MISSOURI—CONFLICT OF LAWS PROBLEMS\*

In this paper the term "garnishment" will be used to designate a proceeding against an intangible money debt as distinguished from a proceeding against tangible property. The primary problems in a garnishment proceeding when the facts present a conflict of laws situation are jurisdictional. The question most difficult to answer appears in a dual aspect: what facts must concur before the forum will have such jurisdiction of the persons and property involved that due process of law requirements will be met, and that the judgment will be entitled to full faith and credit in other states? A second problem arises out of the various jurisdictional difficulties: How can the interests of the garnishee and the principal debtor best be protected in the garnishment proceeding?

#### I

As related to garnishment proceedings the term "jurisdiction" has two distinct connotations. The first of these relates to what

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\* This note follows in general the outline of problems considered in Kennedy, Garnishment of Intangible Debts in New York (1926) 35 Yale L. J. 689, to which the present writer is indebted.

may be called the statutory formalities of jurisdiction as, for example, service of summons and of notice of garnishment, and the return on the writs. These statutory formalities must be complied with to acquire jurisdiction. As to this phase of jurisdiction, it should be noted that proceedings by garnishment were unknown to the common law—the remedy is purely statutory.<sup>1</sup> This aspect of garnishment is not considered in this paper.

The second connotation of "jurisdiction" in garnishment procedure involves numerous complications depending on classification of the *nature* of a garnishment proceeding. Garnishment has at different times been classified by courts as a proceeding *in personam* and as a proceeding *in rem*. These possible classifications involve two problems: First, is a court which entertains a proceeding by garnishment to treat it as a proceeding *in rem* or a proceeding *in personam*? Second, to what extent must a court consider jurisdictional requirements that are essential in order that its rendition of a judgment be entitled to full faith and credit in another forum? Although this classification must be based primarily on an analysis of judicial decisions, legislation may give some aid. The text of the Missouri statute provides:

All persons shall be subject to garnishment, on attachment or execution, who are named as garnishees in the writ, or have in their possession goods, moneys or effects of the defendant not actually seized by the officer, and all debtors of the defendant, and such others as the plaintiff or his attorney shall direct to be summoned as garnishees."

The problems to be considered here are those which concern the second phase of jurisdiction; namely, jurisdiction based on classification of the nature of the procedure.

When the forum is confronted with a simple bi-partite action, the problems of jurisdiction in relation to classification find comparatively easy solution. In order to give a valid judgment against the defendants in an action *in personam*, as a general rule the forum needs to bring the parties before the court by personal service within the state.<sup>3</sup> In certain exceptional in-

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1. In *Trinidad Asphalt Mfg. Co. v. Standard Oil Co.* (1924) 214 Mo. App. 115, 121, 258 S. W. 64, it was said: "Attachment proceedings being in derogation of the common law and wholly the creation of statutory law, the courts have no general jurisdiction thereof but only such special and limited jurisdiction as is given by statute. Such a statute is exclusive, and in order to acquire jurisdiction thereunder the particular mode designated by statute must be strictly followed \* \* \*"

2. R. S. Mo. (1929) sec. 1396. See also R. S. Mo. (1929) secs. 1278, 1291, 1296.

3. The case most frequently cited for this point is *Pennoyer v. Neff* (1877) 95 U. S. 714.

stances constructive service by publication may be permitted in a proceeding *in personam*.<sup>4</sup> On the other hand, if the action be *in rem*, a court need only secure control over the particular thing located within the geographical limits of the forum and then give some reasonable type of notice to warn its owner to protect his rights.<sup>5</sup>

However in the tri-partite garnishment procedure, the essentials of jurisdictional prerequisites become more involved and perplexing. The fundamental problems of jurisdiction based on classification of the nature of the proceeding are the same as in a simple bi-partite action. But the introduction of a third party (hereafter called garnishee), who owes money to a principal debtor, complicates classification of the procedure as one strictly *in rem* or *in personam*, and so tends to blur the determination of those formalities of jurisdiction with which there must be compliance.<sup>6</sup>

The first possible classification of garnishment is that it may be treated as a proceeding *in personam*, that is, an action directed against either the garnishee or the principal debtor, or both, personally. The objective of an *in personam* action is the recovery of a personal judgment which may be satisfied out of the *general* assets of the defendant or defendants. This line of reasoning cannot consistently be followed in garnishment, in as much as the real purpose of the procedure is to reach a *particular* asset, consisting of the chose in action represented by the debt owed to the principal debtor by the garnishee. As to the garnishee the recovery sought is *in personam* since its aim is an adjudication that he is indebted to the principal debtor and that such debt be reduced to judgment in favor of the plaintiff, and satisfied out of the garnishee's general assets. However, as to the plaintiff, the garnishment proceeding is also an attempt to establish his debt against the principal debtor, and to satisfy that claim by an attachment of the property represented by the

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4. For example, in some states if the party to be served is domiciled within the forum; if he has given actual consent (consent in fact) to such service; if he has impliedly consented by the doing of such acts within the forum as the court will hold equivalent to consent. The latter class is illustrated by the non-resident motorist statutes. In connection with this matter see Dodd, *Jurisdiction in Personal Actions* (1929) 23 Ill. L. Rev. 427.

5. Again, this notice must conform to the concept of due process of law. See *Arndt v. Griggs* (1889) 134 U. S. 316, affirming the dictum of *Pennoyer v. Neff* on this point.

6. The person who brings the garnishment will be referred to as the plaintiff; the person who is summoned as garnishee will be termed the garnishee; and the person who owes a debt to the plaintiff and to whom the garnishee owes a debt will be referred to as the principal debtor.

intangible debt owed to the principal debtor by the garnishee. In view of this analysis garnishment cannot accurately be classified as a procedure strictly *in personam*.

The second possible classification of garnishment is as a proceeding *in rem*, that is, a proceeding directed against the intangible thing which consists of the debt owed by the garnishee. Since this is the fundamental purpose of garnishment, the question arises whether the proceeding is entirely in the nature of an action *in rem* so that the presence of the intangible *res* within the territorial limits of the forum gives the court power to render a valid judgment, regardless of the lack of presence and personal service upon the principal debtor.<sup>7</sup> But the same considerations advanced in the preceding paragraph indicate, also, that garnishment cannot accurately be described as a proceeding strictly *in rem*.

In some cases courts have attempted to classify garnishment under the hybrid designation, *quasi-in-rem*. This classification is misleading since, in effect, it begs the question. Garnishment is actually an *in rem* proceeding as to the principal debtor and an *in personam* proceeding as to the garnishee. Hence, to designate garnishment a proceeding *quasi-in-rem* is incorrect unless the term is intended to imply that it partakes of the nature of both. And if that be intended, it would appear that the proper thing to do is to analyze the procedure into its *in rem* and *in personam* segments rather than to imply that there exists a distinct third classification, *quasi-in-rem*.

When a plaintiff proceeds *by attachment* against *tangible* property of the principal debtor, found in the hands of a third party, there is little difficulty in regard to jurisdiction based on classification of the nature of the proceeding. The proceeding is *in rem* and a court may exercise jurisdiction over a tangible *res* found within the territorial confines of the forum. In garnishment also the plaintiff is seeking to collect his claim, but, instead of proceeding against tangible property, he brings his action against a garnishee, and bases it upon the circumstance that the principal debtor has owed to him an intangible debt.

Now by definition, an intangible is a chose in action or credit of some kind which is incapable of having an actual physical location; it is merely a legal concept. But in dealing with intangibles, for various jurisdictional purposes courts have found it useful to ascribe a *situs* to the property right and have re-

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7. This discussion pertains only to situations in which the principal debtor has been served by publication and has not appeared.

sorted to legal fictions to express that result.<sup>8</sup> Garnishment is not the only situation in which an intangible will be treated as if it had an actual physical presence at some particular place, and in several situations the useful *situs* fiction may be used to give the same intangible location at several distinct places. Thus for purposes of taxation an intangible may be treated as having its location at the domicil of the creditor;<sup>9</sup> for intestate succession it may have its *situs* at the domicil of the debtor;<sup>10</sup> or, in some cases, it may be considered as embodied in a document which is evidence of the debt.<sup>11</sup> The rulings of the courts in these matters depend upon considerations of convenience.

Commercial necessity has called for practical treatment of problems raised in garnishment procedure. As a step toward a practical result courts have reified the debt; but, for jurisdictional reasons which will be indicated, only the intangible debt owed by the garnishee has been so taken as a *res*. In order to deal judicially with the fictional *res*, the second necessary step has been to ascribe to it a *situs* for garnishment purposes.

Some courts ascribe to a debt a *situs* at the domicil of the creditor on the theory that it is a valuable thing in his hands. Others affix a *situs* at the domicil of the debtor, on the theory that a debt is a *res* in the debtor's hands, belonging to the creditor. Still others draw a further distinction in cases where, by the terms of the contract creating it, the debt is payable at a specified place; that place is by them considered the *situs* of the debt for garnishment purposes, without regard to the domicil of either debtor or creditor. Having determined a *situs* for the reified debt owed by the garnishee to the principal debtor, the court may proceed according to the statutory provisions for an *in rem* proceeding. But the plaintiff also seeks a personal judgment against the garnishee and, as to the garnishee, the proceeding is governed by the jurisdictional requirements of an *in personam* proceeding.

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8. The authorities differ as to the situs of intangibles. See: Carpenter, *Jurisdiction Over Debts* (1918) 31 Harv. L. Rev. 905; 1 Beale, *Conflict of Laws* (1st ed. 1935) 455-458, sec. 108.1. For opinions in accord with the maxim, *mobilia non habent situm*, see Story, *Conflict of Laws* (8th ed. 1883) 507-516, secs. 362-369; Wallace v. McConnell (U. S. 1839) 13 Pet. 136; Rio Grande R. R. v. Gomila (1889) 132 U. S. 478; American Bank v. Rollings (1868) 99 Mass. 313; Trowbridge v. Means (1845) 5 Ark. 135; Renier v. Hurlbert (Wis. 1891) 50 N. W. 783.

9. Kirtland v. Hotchkiss (1879) 100 U. S. 491; Boyd v. Selma (1891) 96 Ala. 144, 11 So. 393, 16 L. R. A. 729; Davenport v. Mississippi Ry. (1861) 12 Iowa 539; Potter v. Ross (1852) 23 N. J. Law 517; In re Bronson (1896) 150 N. Y. 1, 44 N. E. 707, 55 Am. St. Rep. 632, 34 L. R. A. 238.

10. Beale, *op. cit. supra*, note 8, at 456, sec. 108.1.

11. Note (1914) 1 Va. L. Rev. 553.

The case of *Harris v. Balk*,<sup>12</sup> decided by the United States Supreme Court in 1904, is the leading case in the United States on the problem of garnishment. In that case Harris, a resident of North Carolina, was indebted to Balk (also a resident of North Carolina) and Balk was indebted to Epstein, a resident of Maryland. While Harris was temporarily in Maryland, Epstein attached the debt owed to Balk by Harris, in accord with the procedure of the state. Upon trial of the cause, Harris consented to the entry of an order of condemnation against him for the amount of his debt to Balk and paid the judgment. Balk then sued Harris in North Carolina on the latter's debt and Harris pleaded the Maryland judgment in bar of recovery. The North Carolina court held that the Maryland judgment was not entitled to full faith and credit since the Maryland court had no jurisdiction to enter the judgment. The basis of the decision was that Harris was served with process when he was but temporarily in Maryland and that the *situs* of the debt for garnishment purposes remained in North Carolina, his domicile.

Upon review in the United States Supreme Court judgment was reversed for Harris, the Court holding that the Maryland tribunal had jurisdiction so that its judgment was entitled to full faith and credit. The Court said:

If there be a law of the State providing for the attachment of the debt, then if the garnishee be found in that State, and process be personally served upon him therein, we think the court thereby acquires jurisdiction over him, and can garnish the debt due from him to the debtor of the plaintiff and condemn it, provided the garnishee could himself be sued by his creditor in that State. \* \* \* If, while temporarily there, his creditor might sue him there and recover the debt, then he is liable to process of garnishment, no matter where the *situs* of the debt was originally.<sup>13</sup>

Thus in *Harris v. Balk* the Supreme Court disregarded the theories under which some courts had considered the fictional *situs* of a debt as localized at the domicile of either the debtor or the creditor and, for the purpose of the full faith and credit clause, adopted the rule that an intangible could be garnished wherever the plaintiff obtained personal service on the garnishee, provided that the principal debtor could have sued him for the same intangible in such forum.

The precise issue of constitutional law raised in *Harris v. Balk* was that of the full faith and credit required, under the

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12. (1904) 198 U. S. 215.

13. *Harris v. Balk* (1904) 198 U. S. 215, 222.

Federal Constitution, to be given by North Carolina to the sister-state garnishment judgment of Maryland. This in turn hinged on the question of due process of law in the procedure leading up to the Maryland judgment. The Supreme Court decision is authority for no more than that personal service of a garnishee temporarily within the forum may constitute the basis for jurisdiction over the debt-*res*. In reaching this decision the Court rejected the views that an intangible debt has its *situs* at the domicile of either the debtor or of the creditor for the purpose of garnishment and this *dictum* has proved highly persuasive to state courts, although it is not binding upon them.

## II

In view of the tri-partite nature of a garnishment proceeding, there are several possible fact situations which may exist in cases presented to a state court for adjudication. In the event that all the parties are domiciled in the forum, no problem of conflict of laws is presented. In such cases the plaintiff merely follows the statutory procedural requisites to secure jurisdiction, the primary phase of jurisdiction indicated at the beginning of this note. In the following situations, however, conflict of laws problems may arise: (1) when the garnishee is domiciled in the forum and the principal debtor is not; (2) when the principal debtor is domiciled in the forum and the garnishee is not; (3) when neither the garnishee nor the principal debtor is domiciled in the forum. These situations will be considered in the order above stated. It will be noted, however, that the domicile of the plaintiff is not material in determining jurisdiction based on the classification of the nature of the procedure in these situations, since his presence in the forum is essential to bringing the action in the first place.

### (1) *When the Garnishee Is Domiciled in Missouri and the Principal Debtor Is Not*

The earliest case involving the problem presented when the garnishee is a resident of Missouri and the principal debtor is a non-resident throws no particular illumination on the problem. In *Lackland v. Garesche*,<sup>14</sup> in which the resident garnishee was a trustee of property for a non-resident *cestui*, the principal debtor, the court held merely that the plaintiff had mistaken his remedy in seeking to garnish trust property. Hence, no recovery was allowed.

The case of *Wabash Western Railway v. Siefert*<sup>15</sup> also gives

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14. (1874) 56 Mo. 267.

15. (1890) 41 Mo. App. 35.

but little help. In this case the plaintiff appealed to the Missouri courts to enjoin the defendant from prosecuting certain actions in Illinois courts in which plaintiff had been summoned as garnishee by the defendant. In deciding this case for the plaintiff the court again said nothing about the nature of garnishment jurisdiction, and merely held that Missouri courts could take jurisdiction and issue an injunction against the parties' proceeding fraudulently in a foreign forum.

In the early cases involving the garnishment of debts in a conflict of laws situation, the St. Louis Court of Appeals treated the action as a proceeding *in rem*. By resorting to the fiction of the *situs* of intangibles, the court decided that it had jurisdiction over the *res* and, consequently, power to render a valid judgment. In the first of these cases, *Fiedler v. Jessup*,<sup>16</sup> all the parties—plaintiff, garnishee, and principal debtor—were residents of Illinois. Suit was brought in the St. Louis Court of Appeals to collect a debt allegedly owed the plaintiff by the Missouri agent of the garnishee. The court stated the law as follows:

A proceeding by garnishment is not in the nature of a personal action against the garnishee.\* \* \*

It is evident that a debt, like all other property, must have a *situs* somewhere.<sup>17</sup>

The court then proceeded to consider the different theories advanced by other jurisdictions concerning *situs* of a debt in garnishment and concluded that, in line with New England authority<sup>18</sup> and in opposition to stated New York authority,<sup>19</sup> the *situs* of an intangible should be held to be at the domicile of the debtor for purposes of garnishment, although it might be at the domicile of the creditor for other purposes. As an exception to this general rule the court also stated that, when a debt was expressly made payable at a named location, the place of payment should be considered to be its *situs* for garnishment.<sup>20</sup> Since both principal debtor and garnishee were domiciled in Illinois and no other place of payment was specified, the *situs* of the debt under any theory was considered as being in Illinois, and beyond the jurisdiction of the forum. Therefore the attempted garnishment failed.

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16. (1887) 24 Mo. App. 91.

17. *Fiedler v. Jessup* (1887) 24 Mo. App. 91, 93-94.

18. E. g., *Tingley v. Bateman* (1813) 10 Mass. 343; *Lovejoy v. Albee* (1851) 33 Me. 414, 54 Am. Dec. 630; *Sawyer v. Thompson* (1852) 24 N. H. 510.

19. E. g., *Osgood v. McGuire* (1875) 61 N. Y. 524; *Williams v. Ingersoll* (1882) 89 N. Y. 508.

20. *Accord, Walker v. Fairbanks & Co.* (1893) 55 Mo. App. 478.



The following year the St. Louis Court of Appeals in the case of *Todd v. Missouri Pacific Railway*<sup>21</sup> affirmed the dictum of the *Fiedler* case that when a debt is payable in a state other than the forum, Missouri courts have no *in rem* jurisdiction in a proceeding of garnishment.

In *Keating v. American Refrigerator Co.*,<sup>22</sup> decided the same year, the court adhered to its prior concept of the *situs* of a debt for *in rem* jurisdiction in garnishment, saying:

The decisions in this state \* \* \* [hold] that the *situs* of the debt is the place where the debtor resides, *unless* the debt by the terms of the contract is payable elsewhere; and in the latter event, such *situs* is at the place where the debt is payable.<sup>23</sup>

However, as authority supporting the decision, the court cited *Williams v. Ingersoll*,<sup>24</sup> a New York case, for the concept of *in rem* jurisdiction in garnishment based on the *situs* of an intangible at the domicile of the debtor. The court did not notice that only one year before, in the *Fiedler* case, the same decision had been cited by the same court as authority for the concept that *in rem* jurisdiction in garnishment requires that intangibles be considered as having a *situs* at the domicile of the creditor.

Up to this time there had been no case decided in the Supreme Court of Missouri which considered the problem of jurisdiction from the standpoint of classification of garnishment as a proceeding *in rem* or *in personam*. The problem was, however, raised by the case of *Wyeth Hardware & Manufacturing Co. v. H. F. Lang & Co.*,<sup>25</sup> wherein the supreme court laid down the rule that still obtains in Missouri concerning the *situs* of a debt for purposes of garnishment. The supreme court in effect adopted the decision of the Kansas City Court of Appeals in the same case,<sup>26</sup> and that decision is considered here.

The facts of the *Wyeth* case were those considered principally under this subdivision, that is, where the garnishee is domiciled in the forum and the principal debtor is domiciled in another state. As will appear in the statement of facts, the garnishment forum here was not Missouri. However, in deciding the case, the supreme court found it necessary to consider the question

21. (1888) 33 Mo. App. 110.

22. (1888) 32 Mo. App. 293.

23. *Keating v. American Refrigerator Co.* (1888) 32 Mo. App. 293, 297.

24. (1882) 89 N. Y. 508.

25. (1895) 127 Mo. 242, 29 S. W. 1010, 27 L. R. A. 651, 48 Am. St. Rep. 626.

26. *Wyeth Hardware & Mfg. Co. v. H. F. Lang & Co.* (1893) 54 Mo. App. 147.

of jurisdiction in garnishment based on the nature of the procedure and the *situs* of an intangible for garnishment purposes. In that case, *A* brought an action in the Missouri courts to restrain *B* from enforcing judgments rendered in a garnishment action in Kansas. *A*, a resident of Missouri and the principal debtor, had been notified by publication in Kansas and evidently had not appeared before the court; the garnishees were domiciled in Kansas. *A*'s claim before the Missouri court was that *B* should be enjoined from enforcing the Kansas judgment inasmuch as he, *A*, had been served only by publication in that proceeding and thus that the Kansas court had acquired no jurisdiction to return the judgments in issue. The Kansas City Court of Appeals held that when the forum has jurisdiction *in personam* over the garnishee by personal service and over the principal debtor by publication, for purposes of garnishment, the forum may take jurisdiction of the *res*, namely, the debt which the resident garnishee owes to the non-resident principal debtor. In its opinion the court said:

Contracts respecting personal property and debts are now universally treated as having no *situs* or locality; and they follow the owner in point of right. They are deemed to be in the place and are disposed of by the law of the domicile of the owner wherever in point of fact they may be situate in accordance with the maxim *mobilia non habent situm* \* \* \*. It has been ruled in effect that a debt without reference to where payable is deemed attached to the person of the owner so as to have its *situs* at his domicile, yet this fiction always yields to laws for attaching the property of a non-resident because such laws necessarily assume that the property has a *situs* distinct from the owner's domicile. Wherever the creditor might maintain a suit to recover the debt there it may be attached as his property, provided the laws of such place authorize it.<sup>27</sup>

The court then stated that it disagreed with the holding of the St. Louis Court of Appeals in the *Keating* and *Fiedler* cases, insofar as those decisions held that the *situs* of a debt is where it is to be paid when the contract creating it makes it payable at a particular place. The net result of the *Wyeth* case was that Kansas had jurisdiction in its action *in rem* since the *situs* of a debt for garnishment purposes is in the person of the debtor wherever he may be, as long as he could be sued on the debt by his creditor in that place.

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27. *Id.* at 153.

As stated, the supreme court on appeal affirmed the decision,<sup>28</sup> adopting the portion of the opinion quoted above, and said that in its judgment the quoted language was supported by the weight of authority and reason.<sup>29</sup>

In the case of *Dinkins v. Crunden-Martin Co.*,<sup>30</sup> A, a resident of Missouri, recovered a judgment against B, a resident of Mississippi. Because B could not be reached for execution, A garnished a salary due B from C, who was B's employer and who was a resident of Missouri, that is, A sought, in Missouri, to have B's salary applied in satisfaction of A's judgment. The St. Louis Court of Appeals, without mention of its prior holdings in the *Fiedler* and other cases discussed above, cited the *Wyeth* case as authority for the proposition that the court had jurisdiction of the cause, even though the debt was payable in Mississippi, and though the principal debtor did not appear. However, in a later case, *Smith-Premier Typewriter Co. v. National Cash Register Co.*,<sup>31</sup> where the facts were similar to those involved in the *Dinkins* case, the St. Louis Court of Appeals refused jurisdiction, basing its refusal on the fact that the garnishee actually owed nothing to the non-resident principal debtor. But the court quoted with favor an excerpt from the opinion in *McCord & Nave Mercantile Co. v. Bettles*:<sup>32</sup>

A court has no jurisdiction over the debtor as a party when he has been merely notified by publication and has not heeded the notice. It has jurisdiction over the property brought into court, and over that only. The jurisdiction of the court in such cases depends upon whether there is a *res* upon which it can act.<sup>33</sup>

The court also cited with favor the recognition in the *McCord* case that garnishment is in the nature of, but not strictly, a proceeding *in rem*.

It cannot be argued that the St. Louis Court of Appeals here or the Kansas City Court of Appeals in the *McCord* case was

28. *Wyeth Hardware & Mfg. Co. v. H. F. Lang & Co.* (1895) 127 Mo. 242, 29 S. W. 1010, 27 L. R. A. 651, 48 Am. St. Rep. 626.

29. Accord: *Howland v. Chicago, R. I. & P. Ry.* (1896) 134 Mo. 474, 36 S. W. 29; *Western Stoneware Co. v. Pike County Mineral Springs Co.* (1913) 172 Mo. App. 696, 155 S. W. 1083; *Hartung v. Northwestern Mut. Life Ins. Co.* (1913) 174 Mo. App. 289, 156 S. W. 981; *State ex rel. Leahy v. Barnett* (1915) 193 Mo. App. 36, 180 S. W. 458; *Farrar v. American Express Co.* (Mo. App. 1919) 219 S. W. 989; *Ralston Purina Co. v. King* (1937) 101 S. W. (2d) 734.

30. (1903) 99 Mo. App. 310, 73 S. W. 246.

31. (1911) 156 Mo. App. 98, 135 S. W. 992.

32. (1894) 58 Mo. App. 384.

33. *McCord & Nave Merc. Co. v. Bettles* (1894) 58 Mo. App. 384, 387.

advancing the theory that by its nature garnishment must necessarily involve personal service on or voluntary appearance of the principal debtor, since by Missouri statutes it is provided that service by publication may be had in garnishment.<sup>34</sup> It is submitted that both courts were in fact announcing the theory that personal service on or appearance of the principal debtor is not necessary. Proper personal service on and presence of the garnishee is sufficient if he holds "effects and credits of the defendant principal debtor" since such service and appearance confers jurisdiction on the court over the *res*. This also implies, of course, that jurisdiction based on compliance with all of the statutory formalities exists in such suit. Thus, although a personal judgment cannot be rendered as against the principal debtor in such a case, a judgment as against debts owing to him by the garnishee may be valid.

Regarding the facts typified in this first section, where the garnishee is domiciled in Missouri and the principal debtor is not, it appears that the Missouri Supreme Court subscribed to the rule which was to be adopted ten years later by the Supreme Court of the United States in *Harris v. Balk*. In determining jurisdiction by classification of the nature of the procedure, the lower Missouri courts in their early decisions felt that the proceeding was strictly *in rem*, with the *situs* of the debt as the determining factor in finding this type of jurisdiction. In line with this theory the lower courts held that the *situs* of a debt for garnishment purposes was at the domicil of the debtor, unless the contract made it payable at some other place. Later, however, in the *Wyeth* case, the Missouri Supreme Court recognized that for some purposes garnishment sounds *in personam*. Hence, the Missouri Supreme Court laid down the Missouri rule for this type of case by holding that garnishment would lie against the garnishee, regardless of his domicil, in any forum wherein he might have been sued by the principal debtor. Thus, in effect, the procedure is now held to be *in personam* as to the garnishee and *in rem* as to the debt due from the garnishee to the principal debtor.

(2) *Where the Principal Debtor Is and the Garnishee Is Not Domiciled In Missouri*

The problem of garnishment jurisdiction when the principal debtor is and the garnishee is not domiciled in Missouri presents fewer complications than the situation previously considered.

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34. R. S. Mo. (1929) secs. 739, 748, 2436.

Although there are no recorded cases in which a non-resident, temporarily in Missouri, has been summoned as garnishee, it is submitted that jurisdiction in such a case would be primarily a matter of compliance with the statutory formalities. In order to have jurisdiction over the garnishee in this situation, the court must require personal service of the garnishee within the geographical limits of the forum. A failure to have such personal service would prevent the court from acquiring jurisdiction according to the statutory formalities, and any judgment rendered against the garnishee without such service would be *coram non judice*. Orthodox principles of due process at common law as well as due process under the Fourteenth Amendment to the Federal Constitution require such service.<sup>35</sup> If the statutory prerequisites to jurisdiction are satisfied, under the theory of the *Wyeth* case there would be no question of jurisdiction based on classification of the nature of the proceeding. The forum would have *in personam* jurisdiction over the garnishee by personal service and, under the *Wyeth* case, would also have *in rem* jurisdiction over the intangible brought under control of the court by reason of the garnishee's presence in the forum. Hence personal service on the garnishee would not only secure valid jurisdiction of both types but would also make the proceeding one of internal law rule as opposed to conflict of laws.

(3) *Where Neither the Garnishee Nor the Principal Debtor Is Domiciled In Missouri*

As indicated above,<sup>36</sup> the leading case in the United States on the problems of garnishment is *Harris v. Balk*. That case dealt with the situation where neither principal debtor nor garnishee is domiciled in the forum. There is no reported Missouri case on all fours factually with the situation involved in the *Harris* case, nor is there a Missouri case in which one temporarily in Missouri has been summoned as a garnishee, either when the principal debtor resided in Missouri or was himself a non-resident. From the reported cases, however, certain predictions can be made as to the probable result if such case should be brought. The closest factual analogy to *Harris v. Balk* found in the Missouri reports is the case of *Palmer v. Bank of Sturgeon*.<sup>37</sup> However, here the analogy fails in one vital particular, which will be shown in a review of the case.

In the *Palmer* case, A, a resident of Tennessee, had a claim

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35. *Pennoyer v. Neff* (1877) 95 U. S. 714.

36. See page 90, *supra*.

37. (1920) 281 Mo. 72, 218 S. W. 873.

against *B*, a resident of Missouri. *C*, also a resident of Tennessee, was indebted to *D*, a Missouri banking corporation. *B* had a certain sum of money on deposit in *D* bank. By a proceeding in Tennessee, *A* tried to reach *B*'s deposit in the Missouri bank by serving *C* with process in Tennessee. *B* and *D* were served by publication. *B* did not appear but *D* appeared without objecting to the jurisdiction of the Tennessee court and admitted its debt to *B*. The court then held that *B* was indebted to *A*; that *C* was indebted to *D* bank, which in turn was indebted to *B*; and that the debt of *C* to *D* be applied in payment of the claim of *A* against *B*. *C* then paid *A* the amount *C* owed to *D*. When *B* later sued *D* in Missouri for the amount *B* had on deposit, *D* pleaded the proceedings and judgment of the Tennessee court. The Missouri court gave decision in favor of *B*, holding that *B* was not bound by the Tennessee proceeding, since jurisdiction over *C* could not give the Tennessee court the right to reach a debt owed by *D* to *B*. Also the voluntary appearance of *D* in Tennessee was held not to give the court jurisdiction over the debt *D* owed to *B*.<sup>38</sup>

From the opinion of the court come the following quotations:

"No sovereignty can extend its powers beyond its own territorial limits to subject either persons or property to its judicial decisions. Jurisdiction must be founded either upon the person of the defendant being within the territory of the sovereign where the court sits, or his property being within such territory; for otherwise there can be no sovereignty exerted, upon the known maxim, *extra territoriam jus dicente impune non paretur*.\* \* \*"<sup>39</sup>

Also:

"The established general rule is that any personal judgment which a state court may render against one who did not voluntarily submit to its jurisdiction, and who is not a citizen of the State, nor served with process within its borders, no matter what the mode of service, is void, because the court had no jurisdiction over his person."<sup>40</sup>

It might seem that the decision in this case is contrary to the decision in the *Wyeth* case regarding jurisdiction by classification of the nature of the proceeding in garnishment, although the *Wyeth* case was nowhere mentioned either by counsel or by

38. See Restatement, *Conflict of Laws*, Mo. Annot. (1937) sec. 108.

39. *Palmer v. Bank of Sturgeon* (1920) 281 Mo. 72, 87, 218 S. W. 873. The court here quotes its opinion in the case of *Smith v. McCutcheon* (1866) 38 Mo. 415.

40. *Palmer v. Bank of Sturgeon* (1920) 281 Mo. 72, 88, 218 S. W. 873.

the court. In the *Palmer* case, a non-resident garnishee appeared in Tennessee and permitted entry of judgment against himself, and the Missouri court refused to give full faith and credit to the decision on the grounds that the Tennessee court had neither *in personam* jurisdiction over the principal debtor, nor *in rem* jurisdiction over the debt owed by the garnishee to the principal debtor. However, it is submitted that the language of the opinion shows a clear distinction between the holding of the *Palmer* case and the general rule in Missouri as stated in the *Wyeth* case. The very fact that the *Wyeth* case was not mentioned in the opinion in the *Palmer* case suggests that the facts called for the application of a different rule of law. The court apparently was impressed by the plaintiff's contention that, although jurisdiction over *C*, the Tennessee debtor of *D* bank, gave the court jurisdiction to garnish debts due from *C* to a non-resident, nevertheless the court did not have the further power to reach a debt that one non-resident owed to a second non-resident to whom *C* was indebted.<sup>41</sup> This holding conforms to the rule in *Harris v. Balk* and in the *Wyeth* case. Those cases held that personal jurisdiction over the garnishee gave the court jurisdiction over the debt he owed to the principal debtor. But the *Palmer* case refused to extend the rule to a case in which one garnishment is superimposed on another, that is, where the garnishee against whom recovery is sought is twice removed from the principal debtor, on whose debt plaintiff bases his right to recover.<sup>42</sup>

Apparently the court also felt that the voluntary appearance of the garnishee in this situation will not supply the jurisdiction otherwise lacking. Although no concrete explanations for this holding appear in the opinion, a number of reasons suggest themselves. First, there is a general antipathy toward permitting the Tennessee court to acquire formal jurisdiction under a statute which runs in the face of Missouri's general rules in regard to such jurisdiction as stated above in the quotation from the opinion. The court said further:

“\* \* \* Even, therefore, should a legislature of a state expressly grant such jurisdiction to its courts [that is, jurisdiction in this type of service of the garnishee by publica-

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41. See also *Wilson v. St. Louis & S. F. Ry.* (1891) 108 Mo. 588, 18 S. W. 286; *Norvell v. Porter* (1876) 62 Mo. 309; *New York Life Ins. Co. v. Dunlevy* (1916) 241 U. S. 518; *Douglass v. Phenix Ins. Co.* (1893) 138 N. Y. 209, 20 L. R. A. 118, 34 Am. St. Rep. 448.

42. The *Palmer* case was appealed to the United States Supreme Court, but was there dismissed for want of jurisdiction in a memorandum opinion. *Bank of Sturgeon v. Stanley Palmer* (1922) 258 U. S. 603.

tion] over persons or property not within its territory, such grant would be treated elsewhere as a mere attempt at usurpation, and all judicial proceedings in virtue of it held utterly void for every purpose."<sup>43</sup>

Furthermore, there is a strong caveat from a practical standpoint against permitting such service to give a court power to render a valid judgment in garnishment. By such a holding possible collusion between a plaintiff and a garnishee might place the trial of the cause in a forum geographically remote from the domicile of the principal debtor, making his appearance for defense difficult, if not impossible. Also, through such collusion, the plaintiff and the garnishee might defraud the principal debtor by selecting a forum whose peculiar holdings would attach liability to the principal debtor which he might avoid in other jurisdictions.

Were it not for the fact that the *Wyeth* case upheld the jurisdiction of a foreign court in relation to a Missouri principal debtor, it might forcibly be urged that by its decision in the *Palmer* case the Missouri court showed a policy to protect Missouri citizens from the harassment of foreign garnishments, since there a Missouri principal debtor was relieved from the effect of a foreign garnishment. It may be that this principle underlies the case since possible hardships to a Missouri principal debtor would undoubtedly be magnified beyond reasonable proportions if the holding of the Tennessee court were sanctioned.

To complete the study of garnishment problems in the hypotheses under consideration, it is necessary to discuss the situation in which a foreign corporation, doing business in Missouri, is summoned as garnishee for debts owed to the principal debtor, inasmuch as the statutes make the rule in such cases different from that which obtains when the garnishee is merely an individual resident of some state other than Missouri. The Missouri statute states that:

Every corporation for pecuniary profit formed in any other state, territory or country, before it shall be authorized or permitted to transact business in this state, or to continue business therein if already established, shall have and maintain a public office or place in this state for the transaction of its business, where legal service may be obtained upon it \* \* \*; and such corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon corporations of like character or-

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43. *Palmer v. Bank of Sturgeon* (1920) 281 Mo. 72, 87, 218 S. W. 873.



ganized under the general laws of this state, and shall have no other or greater powers.<sup>44</sup>

It apparently is the intention of the Missouri legislature that, for purposes of garnishment, foreign corporations doing business in Missouri shall have a status analogous to that of domestic corporations, since they may be served locally through agents which they are required to maintain within the state. Hence, as regards garnishment, these cases involve no conflict of laws principle. By the statutes and the prescribed service the requirements of *in rem* and *in personam* jurisdiction for the different purposes of garnishment are also met. In this connection, it should be observed that the statutes show a strong legislative policy to aid Missouri citizens who seek to summon foreign corporations doing business in Missouri as garnishees and to avoid giving foreign corporations a more favorable position when so summoned than domestic corporations have. In regard to the *situs* for garnishment purposes of a debt owed by a foreign corporation doing business in Missouri and summoned as a garnishee, it appears that the maintenance of the agents required by statute brings the credits within the control of the forum in a garnishment proceeding. Hence, the court has *in rem* jurisdiction over these credits.<sup>45</sup>

### III

The principle underlying *Harris v. Balk* and its Missouri correlative, the *Wyeth* case, results in the elimination of only a part of the fiction which surrounds the treatment of garnishment, and many problems remain to be considered. Before any rule of garnishment can be considered just and proper it must satisfy reasonably well the needs of commercial control at the forum without unreasonable interference with the legitimate interests of another state, primarily that of the principal debtor. The change in the rule of the *situs* of a debt set forth in *Harris v. Balk* illustrates one aspect of the situation, for that decision met the crying need for a concept of a debt which did not stop at state lines, arising from the ever increasing interstate character of business transactions.<sup>46</sup> But more is required of the rule

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44. R. S. Mo. (1929) secs. 4596, 4597.

45. *St. Louis Perpetual Ins. Co. v. Cohen* (1845) 9 Mo. 421; *McAllister v. Pennsylvania Ins. Co.* (1859) 28 Mo. 214; *John Swallow v. Duncan & Gregory* (1885) 18 Mo. App. 622; *Western Assurance Co. v. Walden* (1911) 238 Mo. 49, 141 S. W. 595; *Hartung v. Northwestern Mut. Life Ins. Co.* (1913) 174 Mo. App. 289, 156 S. W. 980; *Farrar v. American Express Co.* (Mo. App. 1919) 219 S. W. 989; *Kurre v. American Indemnity Co.* (1929) 223 Mo. App. 406, 17 S. W. (2d) 685.

46. Kennedy, *Garnishment of Intangible Debts in New York* (1926) 35 Yale L. J. 689.

if justice is to be done. In the balance of interests between the forum and the other states, a rule which does not go very far in preventing the subjection of the garnishee to possible double liability and in protecting the principal debtor from the fraud of the other parties cannot be considered satisfactory, no matter what its efficacy when judged by the standards of the forum.

A judgment against the garnishee and the payment thereof will not serve as a bar to recovery against him in a subsequent action on the debt by the principal debtor unless the court in the garnishment proceedings has jurisdiction to render the judgment.<sup>47</sup> It is therefore extremely important for his own protection that the garnishee determine whether the court may properly be said to have jurisdiction. This determination is complicated by the fact that both requisites of jurisdiction, that is, compliance with the statutory formalities and correct treatment of the procedure as *in rem* or *in personam*, must be met before full faith and credit is required to be given to the judgment under *Harris v. Balk*.

In one important portion of its opinion bearing upon the problem of possible double liability in *Harris v. Balk* the court said, by way of dictum:

But most rights may be lost by negligence, and if the garnishee were guilty of negligence in the attachment proceeding, to the damage of Balk [principal debtor], he ought not to be permitted to set up the judgment as a defense. Thus it is recognized as the duty of the garnishee to give notice to his own creditor, if he would protect himself, so that the creditor may have the opportunity to defend himself against the claim of the person suing out the attachment. \* \* \* we think it [want of notice to principal debtor by garnishee] has and ought to have an effect upon the right of the garnishee to avail himself of the prior judgment and his payment thereunder. This notification by the garnishee is for the purpose of making sure that his creditor shall have an opportunity to defend the claim made against him in the attachment suit. Fair dealing requires this at the hands of the garnishee.<sup>48</sup>

As to this passage it is possible that the court may not have considered fully the practical aspects of a garnishment proceeding. It cannot be presumed that the ordinary party served in a garnishment case will realize the existence of so onerous a burden.

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47. Pulitzer Publ. Co. v. Current News Features, Inc. (C. C. A. 8, 1938) 94 F. (2d) 682; Palmer v. Bank of Sturgeon (1920) 231 Mo. 72, 218 S. W. 873.

48. *Harris v. Balk* (1904) 198 U. S. 215, 227.

Possibly he may have no reasonable means of locating and notifying the principal debtor. Other difficulties are illustrated by several fact situations.<sup>49</sup>

In the *Palmer* case, the garnishee was not served personally but only by publication. He appeared, admitted the debt, and paid the resulting judgment. In a later action by the principal debtor against the garnishee, the former judgment was held not to bar recovery, because the statutory requirements for jurisdiction in the earlier suit had not been met. Apparently it was felt that the failure of the garnishee to object to the jurisdiction of the court in the first suit was such want of due diligence as to justify his being held doubly liable.

Or, again, *A* sues to garnish *C*'s debt to *B*. *C* is served personally, but no service, either personal or by publication, is had on *B*. *C* admits the debt and pays the judgment. When *B* later sues *C* on the debt, it has been held that the first judgment will not bar recovery by *B*.<sup>50</sup>

And finally, *A* sues to garnish *C*'s debt to *B* and both parties are served properly. *B* has a defense against *A* which if raised would bar recovery. *C*, however, does not urge the defense, either from lack of knowledge thereof or from lack of due diligence. *B* does not appear. In this case hardship is inevitable. Either *B* will later be permitted to recover in an action against *C*, thus burdening *C* with double liability, or *B* will be denied recovery, thus putting the loss on him.

Prior to the decision in *Harris v. Balk* there existed the absurd possibility that one state might deny full faith and credit to a judgment valid where rendered, merely because of conflicting concepts of the *situs* of the debt and, therefore, of jurisdiction. This result is no longer possible as long as the theory of the court hearing the garnishment proceeding coincides with that set forth in the *Harris* case, since that case held such a judgment

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49. The following cases illustrate failure of jurisdiction in garnishment actions. They are not used to illustrate the exact point involved, but are cases where, if the jurisdictional objection had not been made, there might have been a double liability assessed against the garnishee on the grounds that the judgment was no bar to an action by the principal debtor against the garnishee. *Smith-Premier Typewriter Co. v. National Cash Register Co.* (1911) 156 Mo. App. 98, 135 S. W. 992; *Jenkins Sons Music Co. v. Sage* (1914) 184 Mo. App. 340, 171 S. W. 672; *Riley Pa. Oil Co. v. Symmons* (1916) 195 Mo. App. 111, 190 S. W. 1041; *Kilroy v. Briggs* (1918) 198 Mo. App. 240, 200 S. W. 436; *Federal Truck Co. v. Mayer* (1924) 216 Mo. App. 443, 270 S. W. 408; *State ex rel. Shaw State Bank v. Pfeffle* (1927) 220 Mo. App. 676, 293 S. W. 512; *Vittert v. Melton, Sieberling Rubber Co.* (Mo. App. 1935) 78 S. W. (2d) 467; *Milliken v. Armour & Co.* (1937) 231 Mo. App. 662, 104 S. W. (2d) 1027.

50. *Johnson Mach. Co. v. Watson* (1894) 57 Mo. App. 629.

entitled to full faith and credit. However, *Harris v. Balk* presents no satisfactory solution of the problem of double liability, as presented in the fact situations noted above, since a judgment may always be impeached for lack of jurisdiction of the issuing tribunal. Under these circumstances it seems a better approach to prevent, insofar as possible, the occurrence of double liability, than to rationalize it after it has become inevitable by branding as negligence an inadvertent error of the garnishee who, in the language of the decisions, is supposed to be uninterested in the outcome of the suit.

Of course the rule in *Harris v. Balk* extends no protection to the garnishee outside the boundary lines of United States authority. Foreign countries may therefore refuse to grant recognition to judgments valid under the jurisdictional concepts of *Harris v. Balk*. Before such a forum, the payment by the garnishee of a valid United States judgment might be no defense to a subsequent action brought against him by the principal debtor. Thus a further aspect of the problem of double liability is presented.

The second major difficulty in the application of the rule of *Harris v. Balk* and of the *Wyeth* case operates against the interests of the principal debtor. Inasmuch as the principal debtor has no control over the whereabouts of his debtor he may be confronted with a garnishment proceeding brought in a jurisdiction geographically remote from his home. The cost and trouble of defense as compared to the size of the debt in issue might compel the principal debtor to permit judgment against himself by default, although if the action had been brought nearer home he might have interposed a valid defense.

The principal debtor may have a valid defense against the plaintiff but through lack of actual notice he may not appear at the garnishment proceedings. The garnishee may not know of the defense and, admitting his debt, may pay the judgment. If the garnishee is allowed to plead the payment in bar to a subsequent action against him by the principal debtor, it will be seen that the problem of double liability has been solved only at the expense of the principal debtor.

Various writers have suggested various devices to cure or at least ameliorate the harsh results here outlined. For example, Professor Beale has advocated the French procedure of *Saisie Arret*.<sup>51</sup> This action consists of the issuance of an injunction

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51. Beale, *op. cit. supra*, note 8, at 466, sec. 108.5; Beale, *The Exercise of Jurisdiction in Rem to Compel Payment of a Debt* (1913) 27 *Harv. L. Rev.* 107.

against payment by the garnishee of his debt to the principal debtor. Thereafter suit is brought by the plaintiff against the principal debtor, wherever he may be found, and if judgment is recovered it is satisfied by payment into the court which issued the injunction, of the debt owed by the garnishee to the principal debtor. Professor Beale states that this substitute for garnishment proceedings could be adopted in the United States by legislation, and suggests an act of Congress.

Professor Holt<sup>52</sup> suggests that the Federal Interpleader Act<sup>53</sup> might be the basis for a possible solution, at least in cases where a non-resident corporation is summoned as garnishee in a state where it is doing business.

A note in the Yale Law Journal<sup>54</sup> suggests a policy which appears to have great merit, at least from the standpoint of expediency. The note states that since only the plaintiff stands to gain from a garnishment, he alone should bear the burden of a possible loss. This, the note submits, could be simply achieved through a statute requiring the plaintiff in a garnishment action to post a bond to indemnify the garnishee against possible double liability.

#### CONCLUSIONS

The conclusions to be drawn from a study of Missouri cases on the conflict of laws of garnishment may be summarized as follows:

1. In the early cases the courts emphasized those characteristics of garnishment which led to its classification as an *in rem* proceeding.

2. Under this view jurisdiction was conditioned by the theory of the *situs* of the debt. This *situs* was held to be at the domicile of the debtor or at the specified place of payment.

3. Beginning with the decision in the *Wyeth* case, Missouri became one of an increasing number of states to adopt the rule which was expressed ten years later by the United States Supreme Court in *Harris v. Balk*; namely, that garnishment will lie whenever the garnishee is personally served in any forum in which the principal debtor could have brought an action against him on the debt. It would seem that the *Wyeth* case laid down a general rule, applicable to any fact-situation of the conflict of laws of garnishment.

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52. Holt, *The Federal Interpleader Act and Conflict of Laws in Garnishment* (1937) 4 U. of Chi. L. Rev. 403.

53. (1936) 49 Stat. 1096, 28 U. S. C. A. (Supp. 1939) sec. 41 (26).

54. Note (1939) 48 Yale L. J. 690.

4. Thereafter the Missouri cases have consistently classified the garnishment of intangible debts as a proceeding *in personam* in relation to the garnishee, and as a proceeding *in rem* in relation to the principal debtor.

5. A rule of garnishment, such as that laid down in *Harris v. Balk* must reasonably meet the needs of the forum with respect to commercial control, without undue interference with legitimate interests of other states. But it must go further. Some means must be found to protect the interests of the principal debtor, and to guard against the possibility of double liability of the garnishee, which is inherent in the *dictum* in *Harris v. Balk*. On this phase of the problem there are no Missouri cases. Of the suggested solutions, it is submitted that a statute requiring the plaintiff to post a bond indemnifying the garnishee and the principal debtor against possible loss has the greatest merit.

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### PERSONAL DISQUALIFICATIONS OF ADMINISTRATORS\*

At early common law there were no statutes governing the selection of the administrator of a decedent's estate.<sup>1</sup> Today in all American states,<sup>2</sup> as well as in England,<sup>3</sup> there are statutes

\* Part II of this note, dealing with judicial disqualifications of administrators, will appear in the next issue of the Quarterly.

1. 3 Schouler, *Wills, Executors and Administrators* (6th ed. 1923) 1671, sec. 1389.

2. Ala. Code (1928) secs. 5730, 5742-5745; Ariz. Rev. Code (1928) secs. 3922-3925, 3992; Ark. Digest of Statutes (Pope's 1937) c. 1, secs. 7-9, 15; Cal. Probate Code (1937) c. 4, art. 1, secs. 420-426, art. 2, sec. 442; Colo. Comp. Laws (1921) secs. 5222, 5228; Conn. Gen. Stats. (1930) sec. 4904; Del. Rev. Code (1935) secs. 3808-3810; Fla. Comp. Laws (1927) secs. 5521-5526; Ga. Code (1933) c. 113, secs. 1202-1204; Idaho Code (1932) tit. 15, secs. 312-328; Ill. Smith-Hurd Ann. Stats. (1934) c. 3, sec. 18; Ind. Burns Stats. (1933) tit. 6, secs. 301-304; Iowa Code (1935) secs. 11883, 11884, 12066; Kan. Gen. Stats. (1935) c. 22, secs. 312, 328; Ky. Carroll's Stats. Ann. (1936) secs. 3845, 3896; La. Civil Code (1932) secs. 1042-1046; Me. Rev. Stats. (1930) c. 76, secs. 18, 25, 27; Md. Ann. Code (1924) art. 93, secs. 15-29, 53; Mass. Gen. Laws (1932) c. 193, secs. 1, 2; Mich. Comp. Laws (1929) secs. 15586, 15595; Minn. Mason's Stats. (Supp. 1936) secs. 8992-68; Miss. Code (1930) secs. 1629, 1630, 1642; R. S. Mo. (1929) secs. 6-10, 43, 47; Mont. Rev. Code (1935) secs. 10068-10073; Neb. Comp. Stats. (1929) c. 30, secs. 314, 323; Nev. Comp. Laws (1929) secs. 9637-9641; N. H. Pub. Laws (1926) c. 299, secs. 2-10; N. J. Rev. Stats. (1937) tit. 3, c. 7, sec. 6; N. M. Stats. Ann. (1929) c. 47, art. 1, secs. 109-111; N. Y. Thompson's Laws (1939) Surrogate's Court Act, secs. 94, 118; N. C. Code (1935) secs. 6-15; N. D. Comp. Laws (1913) secs. 1657, 8663; Okla. Stats. (1931) secs. 1135-1149; Ore. Code Ann. (1930) tit. 11, secs. 208-210, 231; Ohio Gen. Code Ann. (Page's 1926) tit. 3, c. 3, secs. 10629, 10636, 10617, (Supp. 1926-1935) secs. 10509-3; Pa. Purdon's Stats. (1936) tit. 20, secs.