

132 of 214 DOCUMENTS

JAMES C. THOMPSON ET AL. v. CENTRAL METAL & SUPPLY COMPANY.**No. 48****COURT OF APPEALS OF MARYLAND***158 Md. 186; 148 A. 231; 1930 Md. LEXIS 27***January 8, 1930, Decided**

PRIOR HISTORY: [***1] Appeal from the Baltimore City Court (ULMAN, J.).

Attachment by the Central Metal & Supply Company against Charles G. Selters, served on James C. Thompson and Barbara Thompson as garnishees. From a judgment of condemnation against the garnishees, they appeal. Affirmed in part and reversed in part.

DISPOSITION: Judgment affirmed in part and reversed in part, and cause remanded that the judgment may be stricken out as to Barbara Thompson; one-half the costs of appeal to be paid by James C. Thompson and one-half by appellee.

LexisNexis(R) Headnotes

HEADNOTES: *Appeal — Quashing Attachment — Garnishment — County of Service — Waiver of Objection.*

Where the testimony taken on a motion to quash an attachment is not in the record, an order overruling the motion will be affirmed.

p. 188

Code, art. 75, sec. 153, authorizing service of summons outside the county of the court issuing the summons, does not apply to the service of a writ of attachment.

p. 188

Code, art. 9, sec. 46, providing that a writ of attachment may be served upon any person by way of garnishment wherever he may be found, does not apply to a writ of attachment on judgment, and a service of such writ on one as garnishee outside the county where the writ issues is a nullity.

pp. 188, 189

One served as garnishee in the county where the writ issued, if he fails to plead to the jurisdiction, waives the objection that his residence or place of business is not in that county.

p. 189

COUNSEL: George Eckhardt, Jr., submitting on brief, for the appellants.

Walter C. Mylander, with whom was Nathan Patz on the brief, for the appellee.

JUDGES: The cause was argued before BOND, C. J., PATTISON, URNER, ADKINS, OFFUTT, DIGGES, and PARKE, JJ.

OPINIONBY: ADKINS**OPINION:**

[**233] [*187] ADKINS, J., delivered the opinion of the Court.

The appellee, the Central Metal and Supply Company, obtained a judgment against one Charles G. Selters in the Baltimore City Court, and Selters obtained a judgment against the appellants, James C. Thompson and Barbara Thompson, in the Circuit Court for Baltimore County. Whereupon the appellee caused to be issued out of the Baltimore City [***2] Court a writ of attachment on its judgment directed to the sheriff of Baltimore City commanding him to attach "any of the lands, tenements, goods, chattels, and credits of the said Charles G. Selters if they should be found in your bailiwick," and the sheriff served said writ upon Mrs. Thompson in Baltimore County and upon Mr. Thompson in Baltimore City, and summoned them as garnishees. It was admitted that Mr. and Mrs. Thompson were residents [*188] of Baltimore County and had no business or property in Baltimore City.

T. Lyde Mason, Jr., Gersh L. Moss, and Harvey C. Bickel, to whose use the judgment of Selters against the

158 Md. 186, *188; 148 A. 231, **233;
1930 Md. LEXIS 27, ***2

Thompsons had been entered, moved to quash the attachment on the ground that the sheriff had no jurisdiction to serve the writ in Baltimore County. This motion was overruled. Subsequently, George Eckhardt, Jr., appeared specially as attorney for the garnishees and moved to quash the attachment on the ground that it was not issued from the jurisdiction of the garnishees' residence or place of business, but on the contrary, issued out of the Baltimore City Court" and "that the court is without jurisdiction in the premises." Plaintiff filed a motion *ne recipiatur*, [***3] which was granted, and the judgment of condemnation *nisi* was made absolute. Whereupon the said attorney again appeared specially for the garnishees and moved to strike out the judgment on the ground that the court had not jurisdiction to enter the judgment. A motion *ne recipiatur* was filed by plaintiff, which was granted, and the motion was overruled. The garnishees appealed.

It does not appear from the record that any testimony was taken, but it is stated in appellee's brief that the first motion to quash was set down for hearing, and testimony taken which was improperly omitted from the record. If testimony was taken, of course it should have been included in the record under the rule. In the absence of testimony, we are unable to say that the trial court im-

properly overruled this motion. For all that appears it may have been for lack of interest in the movers. The second motion was not sworn to.

There was error in refusing to strike out the judgment as to Barbara Thompson. The sheriff had no authority to summon her in Baltimore County. Section 153 of article 75 of the Code does not apply to attachments. And we decided in *Sanitary Grocery Co. v. Soper*, 146 Md. 130, 126 A. 54, [***4] that section 46 of article 9 of the Code does not apply to attachments on judgments.

[*189] The service on Mrs. Thompson was a nullity and of course, as there was no appearance by her, the judgment as to her was a nullity.

There was no error as to James C. Thompson. He was entitled to be sued in Baltimore County. But having failed to plead to the jurisdiction he waived the right. 1 *Poe, Pl. & Pr.*, sec. 594; *Ockerme v. Gittings*, 35 Md. 169; *Cromwell et al. v. Royal Canadian Ins. Co.*, 49 Md. 366, 383.

Judgment affirmed in part and reversed in part, and cause remanded that the judgment may be stricken out as to Barbara Thompson; one-half the costs of appeal to be paid by James C. Thompson and one-half by appellee.