

ATTACHMENT LAW DEFINED.

Provisions of the Statute Must Be Strictly Construed.

Writ Which Was Issued in McKay Vs. Seattle-Yukon Trading Co. Has Been Dissolved.

An important phase of the law respecting the extraordinary remedy of attachment has recently been rendered by Justice Dugas in the territorial court. The judgment definitely defines what sort of condition precedent is required before the mere issuance of the writ can be sustained.

In this territory, the custom has prevailed for creditors to take advantage of attachment regardless of the existence or non-existence of statutory grounds. Sometimes, the alleged necessity for an appeal to this legal remedy has been more imaginary than real, and in numerous instances great inconvenience has resulted to a debtor by reason of an improper issuance of the special writ.

The case of McKay Brothers, plaintiffs, vs. The Victoria-Yukon Trading Company, defendant, afforded Justice Dugas an opportunity to interpret the law applicable to attachment. In that particular suit, the plaintiffs allege for a cause of action that on October 7th, 1899, at Bennett, B. C., they delivered to the defendant about 18 tons of goods, wares and merchandise; that the defendant agreed to transport the same to Dawson before the river closed in consideration of the sum of \$2250; that the defendant through carelessness and negligence did not reach Dawson within the time specified, and that the goods, wares and merchandise have not been redelivered to the plaintiff; that the market price or value of the consignment at wholesale rates in Dawson amounts to \$16,712.43; that, therefore, the defendant is indebted to the plaintiffs for the value of the goods and merchandise, less the amount of freight, namely in the sum of \$14,462.43.

After the complaint had been filed the plaintiffs procured an attachment. The writ was issued upon certain allegations to the effect that a debt was due and owing to the plaintiffs from the defendant; that the latter was disposing of its property with intent to defraud its creditors; and that Messrs. Carmody and Holland, the defendant's agents, had left the territory with intent to defraud the creditors of the defendant. Under and by virtue of the writ of attachment, the plaintiffs seized a large quantity of goods alleged to be the property of the defendant; but which were stored in the warehouse of the Seattle-Yukon Transportation Company, a separate and distinct corporation. In order to release the attachment levy, the sum of \$16,000 was deposited in court for the purpose of securing the plaintiffs against loss in the event of the writ being finally sustained.

Mr. Wade, attorney for the defendant, made a motion to set aside the attachment upon the ground that the same had been improperly issued, in that the amount alleged to be due to the plaintiffs was not a debt, but a claim for damages. The gentleman advanced other exceptions, but his principle objection was that the plaintiffs' claim was comprised of unliquidated damages which do not warrant the issuance of a writ of attachment. Messrs. Burritt and McKay represented the plaintiffs. In determining the motion, Justice Dugas gave utterance to the following legal principles, appropriate to the issue:

"One of the statutory provisions, upon which the plaintiffs must rely reads: 'After the commencement of any suit wherein the claim is for a debt of \$50 or upwards from the defendant to the plaintiff upon affidavits showing clearly and succinctly from what cause such debt arise, and the amount thereof, and that there is good reason to believe that the defendant has committed, or is about to commit some of the actions mentioned in paragraphs a, b, c and d, the judge may direct the clerk to issue a writ of attachment to seize the goods of the defendant.'

"No claim for damages is to be considered as a debt before prosecuted to judgment. The plaintiffs in this case assert that they do not claim damages for goods lost, but the value of goods at Dawson prices. The action, however, is merely a demand for damages, which are far from being liquidated. It has been pretended that the word debt should be taken in its widest sense. I believe that the principal is to the contrary, for it must be remembered that an attachment before judgment is a harsh proceeding which is of strict law, and the law intends that nobody be exposed to the duress of such proceedings

unless the claim is so certain that there can be, so to speak, no possible controversy about it. Being, therefore, of the opinion that the claim of the plaintiffs is not for the recovery of a debt, the writ of attachment will be set aside with costs, and the defendant will be permitted to withdraw the \$16,000 which has been paid into court."

The decision of Justice Dugas has reduced the plaintiff to the position of pursuing the ordinary legal remedy. Before possession can be taken of the defendant's property, the plaintiffs must secure a judgment in the usual manner and occasion the issuance of a writ of execution.

Living Whist Class.

Prof. H. T. Whitley has his living whist class now well in hand, and his exhibitions of its attainments, which will be given on the evenings of May 22d, 23d and 24th at the Palace Grand for the benefit of St. Mary's hospital, will be the crowning event of the season. The entire class has become imbued with deep interest in the coming series of entertainments, and each member of the human deck has mastered her or his respective part in the great act. The following, many of whom will be recognized as prominent society people, represent the various cards:

Hearts—A, Mrs. J. L. Sales; 2, Miss R. J. Morston; 3, Sgt. F. E. Davis; 4, Mrs. F. E. Wilson; 5, F. W. Clayton; 6, Mrs. C. M. O'Niell; 7, Miss Sadie Claxton; 8, F. F. Jackson; 9, W. Bassett; 10, J. A. Clark; J, S. G. Edwards; Q, Miss M. Norman; K, Capt. D. B. Olson.

Diamonds—A, Miss M. Comer; 2, Mrs. M. P. West; 3, Mrs. E. Agnew; 4, Miss G. T. Carr; 5, G. A. Gardner, jr.; 6, P. Vachon; 7, Miss M. Mosher; 8, Harry Butler; 9, Miss E. Ross; 10, A. Agnew; J, S. W. Taggart; Q, Mrs. E. R. Roberts; K, F. H. Griffith.

Clubs—A, Mrs. H. T. Whitley; 2, Miss B. Croft; 3, Mrs. Timmons; 4, Mrs. J. Rapp; 5, A. S. Kalenborn; 6, V. R. Trenneman; 7, Miss Fannie Wilson; 8, Miss Lucy E. Pratt; 9, Ray Coombs; 10, J. C. Hessian; J, G. G. Cantwell; Q, Mrs. R. Boyker; K, H. P. Hansen.

Spades—A, Miss M. Hughes; 2, A. W. Briggs; 3, Miss Tessie Haycox; 4, Miss G. A. Gandolfo; 5, G. H. Byrne; 6, Mrs. T. Chisholm; 7, Mrs. A. H. Morrison; 8, J. Chisholm; 9, J. R. H. Atkinson; 10, Jake Kline; J, R. H. Pritchard; Q, Mrs. W. J. Stewart; K, Dr. G. F. Washburne.

As a second attraction there will be a May pole in which the following little misses and one master will participate: Fred Eggert, herald; Etta Wolfe; Beatrice Holmes, spring; Luella Buxton, Hazel Handy, Josephine Day, Lillian Day; Emily Shaw, queen; Secondina Rousseau, Nettie Rousseau; Cassie Carter, violet; Florence Schuster, forget-me-not; Elma O'Grady, Louisa Delfell, Alice Lyons, and Josephine Pickel, pansy.

Of the above the following will take part in an amusing and highly appropriate dialogue: Beatrice Holmes, Emily Shaw, Cassie Carter, Florence Schuster, Josephine Pickel and Fred Eggert.

Obedying Orders.

A young man with a decidedly seedy appearance entered the superintendent's office and placing his hand familiarly upon the superintendent's shoulder accosted him thus:

"Boss, can you gimme a job?"
"What department?"
"Either brakins or firin."
"Do you know the book of rules?"
"Some."
"Well, let me see how well you are posted. We will suppose you were firing a train that was running from Jersey City to Philadelphia; the engineer would get killed and you would take his place. You would find on his clip that the train had orders to take the sidetrack for another train somewhere in the woods where there was no telegraph office. Now, suppose that train did not arrive there for, say 12 hours, what would you do?"
"That would be the affair of the conductor, not mine."
"I will take your name, and if we have need of your services we will send for you. Good day."

The next applicant to enter seated himself back of the superintendent and waited for him to break the silence, which he did shortly.

"Well, sir, what can I do for you?"
"I would like to have a job, boss."
"In what department?"
"Train service."
"Are you familiar with the book of rules?"
"A little."

The superintendent then asked him the same question as the first.

The fellow scratched his head, then, looking the superintendent square in the eye, he replied, "Boss, if the orders looked good and were positive I would stay on that side track until hell froze over."
"Go down and report to Mr. —, the trainmaster, for duty."—Philadelphia Inquirer.

"Mainland" and "British Lion" cigars 25 cents. Rochester Bar, cor. Second ave. and Third sts.

NAVIGATION IS OPEN ABOVE.

Scows Are Now Shooting Miles' Canyon and Whitehorse.

The Steamer Florence S. Navigates Thirtymile—River Is Open From Labarge to Selkirk.

By a telegram received at the Nugget office last night it is learned that a greater portion of the upper route is now open to navigation. Scows are already shooting Miles Canyon and Whitehorse rapids, and all of Fiftymile river which connects Lakes Marsh and Lebarge is open.

The steamer Florence S. which wintered at Hootahinqua, has gone up Thirtymile and is now at Lower Lebarge. It is now possible for the little steamer to come this way as far as Selkirk before she would be interfered with by the ice. As the lakes are very low it is feared that they will be open sometime before it is possible for even light draught craft, or even scows to cross the bar in the little channel which connects Bennett and Tagish lakes, as even at high watermark there is less than five feet through the little channel.

If the snow which fell here this morning was general on the upper rivers and lakes, the warm sunshine which, owing to the advanced season, is bound to follow, will cause the recent deposit of the "beautiful" to be a powerful agent in the matter of clearing the river of ice, as the melting snow will add very materially to the volume of water which will very soon rush down the Yukon clearing everything from its channel.

Unless there should be a sudden tightening up of the weather, which would be general all over the upper waters, it is confidently expected that by Sunday there will be material heavings of the bosom of the Yukon, and that but little time will thereafter elapse before the mighty mass will yield to the irresistible pressure and start on its long journey to the sea.

It Was Easy.

I think the clubs ought to change their stories oftener. They run one now-a-days for a month at a time, and that is too long. The latest offense is the Sherlock Holmes story, and if I have had it told to me one time I have a dozen times in the last fortnight. As a matter of self-protection I will print it. Here it is:

The greatest "deduction" specialist among detectives died. In the lobby of the promised land he met a saint named Peter, with key-ring as big as a bicycle tire and many keys.

"I'd like to go inside."

"Quite natural," said Peter, "they all do. What are your name and qualifications?"

"Sherlock Holmes, and I'm the greatest detective in or out of a dime novel; I'm the Esola of London."

"You don't look it. What do you know?"

"Everything."

"Well, I'll try you out, and if you make good you can stay, and if you don't you will have to hunt another happy hunting ground." And St. Peter toyed with a few Yale locks, twisted a combination, and the gates were just enough ajar to permit himself and Mr. Holmes to enter.

The alarm had been given, and several billions of the celestial inhabitants were on hand to inspect the candidate.

"Now I'll give you five minutes to ferret out a man named Adam," said Peter.

"Too much time," said Holmes; "there he is, leaning against that purple cloud."

"Sure enough; but hold on, not yet, my friend," said Peter, "there's a woman in the case, one Eve. Find her."

"Will all the ladies present stand up!" shouted Holmes. "Ah, there she is, the hundred and sixteenth from the right in the eighty-first row."

"Right you are, Mr. Holmes, and you are welcome; make yourself cozy. But on the level, now, how did you do it?"

"Why, that was easy," said the detective; "Adam and Eve had no navels."

It isn't such a wonderful story, but it's epidemic in clubdom.—San Francisco News Letter.

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