

Washington University Law Review

Volume 14 | Issue 1

January 1928

Jurisdiction of Justices' Courts in Actions of Attachment in the City of St. Louis

Carl C. Wheaton
Saint Louis University

Follow this and additional works at: https://openscholarship.wustl.edu/law_lawreview



Part of the [Conflict of Laws Commons](#)

Recommended Citation

Carl C. Wheaton, *Jurisdiction of Justices' Courts in Actions of Attachment in the City of St. Louis*, 14 ST. LOUIS L. REV. 025 (1928).

Available at: https://openscholarship.wustl.edu/law_lawreview/vol14/iss1/3

This Article is brought to you for free and open access by the Law School at Washington University Open Scholarship. It has been accepted for inclusion in Washington University Law Review by an authorized administrator of Washington University Open Scholarship. For more information, please contact digital@wumail.wustl.edu.

JURISDICTION OF JUSTICES' COURTS IN ACTIONS OF
ATTACHMENT IN THE CITY OF ST. LOUIS

BY CARL WHEATON

Just what is the history of the law relating to the territorial jurisdiction of Justices' Courts in attachment cases in the City of St. Louis? What is that jurisdiction today? One might well expect to find several cases decided by appellate courts of the state during the last half century dealing with the answers to those questions, but a thorough search of the authorities will bring to light but a single utterance in the whole jurisprudence of Missouri which deals directly with them. That statement, which is merely a dictum, is found in *Hasler et al. v. Schoop et al.*,¹ decided April 20, 1897, by the St. Louis Court of Appeals. In that case the plaintiffs were suing to set aside a judgment obtained against them by the defendants, a judgment which they claimed was based upon an attachment action which had no proper foundation, since in said action reliance was placed upon their non-residence, whereas they were residents. The petition, however, admits that the action was brought before the proper court. As to that point, the facts were that the action was brought before the justice of the peace within and for the seventh district of the City of St. Louis. The property attached was in the City of St. Louis, but neither the facts nor the record state in what district of the City it was located.

In passing upon the matter of jurisdiction, the court² made the following statement:

It is admitted in plaintiffs' petition, and such is the law, that the justice of the peace, who rendered the judgment complained of in the attachment suit, had jurisdiction of the subject-matter. This is so because all suits before justices by attachment "shall be brought before a justice of the township wherein the property, credits or effects of the defendants, or either of them, may be found, or in any adjoining township thereto, or in the township wherein the defendant resides, or in any adjoining township." R. S. 1889,

¹ 70 Mo. A. 469.

² 70 Mo. A. l. c. 474.

Sec. 6127. In the case at bar the attached effects were in the City of St. Louis and the justice before whom the action was brought had jurisdiction coextensive with that city. Acts of 1893, p. 103; *Gazollo v. McCann*, 63 Mo. App. 414. Hence the levy upon the goods vested him with full jurisdiction of the subject-matter. *Godman v. Gordon*, 61 Mo. App. 691, and cases cited.

The conclusion of the court seems to be that any justice of the City of St. Louis has jurisdiction in attachment actions if the property is within the city limits.

The first statute quoted, which was Section 6127 of the Revised Statutes of Missouri, 1889, if applied to the City of St. Louis, would clearly lead to a different decision. In the case of *Gazollo v. McCann*,³ the court states that in construing statutes dealing with the jurisdiction of justices in townships, when those statutes relate to the City of St. Louis, "township" should be interpreted to refer to "districts" in St. Louis. Now, if we change the word "township" to "district" in Section 6127 of the Revised Statutes of Missouri, 1889, thus making it applicable to the City of St. Louis, it will read as follows:

Sec. 6127. In cases of attachment.—Every action by attachment shall be brought before a justice of the district wherein the property, credits or effects of the defendants, or either of them, may be found, or in any adjoining district thereto, or in the district wherein the defendant resides, or in any adjoining district.

Therefore, if said section was applied to the City of St. Louis, attachment actions in Justices' Courts in St. Louis would have to be brought before a justice of the district wherein the property, credits or effects of the defendants, or either of them might be found, or in any adjoining district thereto, or in the district wherein the defendant resided, or in any adjoining district, and could not, as stated in *Hasler et al. v. Schopp et al.*, be brought in *any* district in St. Louis, as long as the property attached was within the city limits of St. Louis.

The court next refers to Acts of 1893, page 103. This statute, part of which is found on page 103, is an act concerning sewers and drains in Missouri cities which have special charters and

³ 63 Mo. A. 414, 417.

which contain more than two thousand and less than thirty thousand inhabitants and in cities of the third and fourth classes. This obviously does not support the court's argument.

Turning our attention to *Godman v. Gordon*⁴ and cases mentioned therein, which the court in *Hasler et al. v. Schopp et al.*, cited in support of its contention, we find those decisions do not deal with the matter of the territorial jurisdiction of St. Louis justices in attachment cases.

Let us examine the points involved in *Godman v. Gordon*. They are as follows: First, an affidavit for an attachment in a justice's court, though somewhat irregular in that the plaintiff's agent who signed the affidavit was first named as plaintiff, though later in said affidavit the proper person was named as plaintiff, and in that the agent signing the affidavit was not designated in the affidavit as being an agent, was effective under Section 587 of the Revised Statutes of Missouri, 1889, which outlined the essentials necessary to the action before justices. This result was reached even though Section 526 of the Revised Statutes of Missouri, 1889, which applied to affidavits in attachment in circuit courts, required that when such affidavits were signed by agents or attorneys for plaintiffs the fact that the affiant was the plaintiff's agent or attorney should be stated in the attachment affidavit. Nor did Section 604 of the Revised Statutes of Missouri, 1889, change the result, though it provided that the laws governing attachments in circuit courts should apply to attachment proceedings before justices of the peace, so far as the same might not be inconsistent with the provisions which were specially applicable to justices. This result was reached because Section 587 of the Revised Statutes of Missouri, 1889, which dealt specifically with affidavits in attachment actions before justices, did not require that an agent or attorney who signed the attachment affidavit in cases before justices should be named as agent or attorney in such affidavit.

Second, an objection of a garnishee to the jurisdiction in the original attachment proceeding stands on the same footing as the objection of a third person questioning its validity collaterally. In attachment, jurisdiction is acquired by the levy of the

⁴61 Mo. A. 685.

writ and is not ousted by the subsequent irregularity of the publication.⁵

Third, Section 6124 of the Revised Statutes of Missouri, 1889, providing that no justice of the peace shall have jurisdiction to hear or try any action against an executor or administrator does not apply to a garnishment proceeding against an executor or administrator, because a garnishment is not a suit, but a mode of sequestering credits to aid in the satisfaction of a judgment.

Fourth, a return which recited that the officer making said return executed the writ to which his return was made by summoning the garnishees and which further stated that he attached money belonging to the defendant, which money was in the garnishees' hands, was sufficient.

Fifth, if an amended return showed that the officer who made the return had taken the necessary steps to confer jurisdiction against garnishees before judgment was rendered in the garnishment action, the amended return was sufficient, though the amendment to the original return was not made until after the cause was taken to the circuit court by appeal from a justice court.

Without going into a detailed discussion of the various cases cited in *Godman v. Gordon*, upon which cases the court in *Hasler et al. v. Schopp et al.*, also relied to prove its point that any justice in St. Louis had territorial jurisdiction in an attachment case, if the property involved was within the city limits of St. Louis, it can be stated, after a careful perusal of those cases, that though they support the points of law decided in *Godman v. Gordon* as outlined above, they do not in any manner deal with the territorial jurisdiction of justices in St. Louis in attachment cases.

Finally we come to the case of *Gazollo v. McCann*,⁶ decided in 1895 by the St. Louis Court of Appeals. The principal question involved therein was one of territorial jurisdiction of a justice court in the City of St. Louis. An action, brought in the City of St. Louis to recover upon a promissory note, was begun before a justice of a district in which neither the plaintiff nor the defendant was resident. Moreover the action was not brought in

⁵ Point 2 of syllabus.

⁶ Note 3, *supra*.

a district adjoining the ones in which the plaintiff or defendant resided, nor was defendant found in the district in which the action was brought.

Sections 6125 and 6126 of the Revised Statutes of Missouri, 1889, became important to the decision of that case. They read as follows:

Sec. 6125. Jurisdiction coextensive with county.—Every justice of the peace shall have jurisdiction coextensive with the county for which he shall be elected or appointed.

Sec. 6126. Suits, where commenced.—Every action recognizable before a justice of the peace shall be brought before some justice of the township, either: First, wherein the defendants, or one of them, reside, or in any adjoining township; or, second, wherein the plaintiff resides, and the defendants, or one of them, may be found; third, if the defendant is a non-resident of the county in which the plaintiff resides, the action may be brought before some justice of any township in such country where the defendant may be found; fourth, if the defendant is a non-resident of the state, or has absconded from his usual place of abode, the action may be brought before any justice in any county in this state wherein defendant may be found; and, fifth, any action against a railroad company for killing or injuring horses, mules, cattle or other animals, shall be brought before a justice of the peace of the township in which the injury happened, or in any adjoining township.

In *Bornschein v. Finck*,¹ decided December 12, 1882, the statutes just quoted were applied to a case before a justice in the City of St. Louis, and "county" and "township," wherever found in those statutes, were read "the City of St. Louis" and "district" respectively. It was held that a single defendant resident in the City of St. Louis could, in the ordinary action, be sued only in the district in which the defendant resided, or in the district in which the plaintiff resided and in which the defendant could be found. The result was that *Gazollo v. McCann* which was commenced in March, 1894, more than eleven years after the decision in *Bornschein v. Finck*, was begun in the wrong district if the holding in *Bornschein v. Finck* was still authority in March, 1894, since the *Gazollo* case was, as will be recalled, originated in none of the districts in which, according to the *Bornschein*

¹ 13 Mo. A. 120.

case, such an action (one to recover upon a promissory note) might be commenced.

Shortly after the decision in *Bornschein v. Finck* (i.e., on March 31, 1883) the State Legislature passed an act which is found on page 103 of the Laws of Missouri, 1883, which provided:

Section 1. Justices of the peace in all cities in this state having a population of one hundred thousand inhabitants or more, shall have civil jurisdiction in all cases except landlords' summons cases, co-extensive with the limits or boundary lines of such city, in the maximum amounts as now prescribed by statute.

Section 2. All acts or parts of acts inconsistent or in conflict herewith are hereby repealed.

The court in *Gazollo v. McCann* decided that this statute of 1883 changed the former law which had been interpreted by *Bornschein v. Finck*, supporting this conclusion by reference to *Clarkson v. Guernsey Furniture Co.*⁸ The court in the latter case, after stating that the law prior to 1883 was as set forth in *Bornschein v. Finck*, proceeded as follows:

"The question, then, is, whether the legislature, by the act of 1883, above quoted, intended to change this rule. The contention on behalf of the plaintiff is, that, whatever may have been intended by those who procured the passage of the act, the language of the act itself, properly construed, does not import an intention to change the previously existing law. It is argued, that because there is a similar provision, giving justices jurisdiction co-extensive with the county, in the Revised Statutes, which applies generally to justices throughout the state, the legislature, in enacting this statute of 1883, must be understood to have intended nothing more than, out of abundant caution, to extend the same provision to the City of St. Louis. We are bound to suppose that the legislature, in passing an act of this kind, meant *something*, and we know that there never was any substantial doubt about justices of the peace in the City of St. Louis having jurisdiction analogous to, and equally extensive with, that possessed by justices of the peace in the counties of the state. The construction contended for on behalf of the plaintiff would, therefore, give to the act of

⁸ 22 Mo. A. 109.

1883 no meaning whatever. It is true that statutes relating to the same subject must be construed *in pari materia*; but it does not follow from this that the act of 1883 is to have no greater force or effect than would be attained by transplanting the provision of Section 2838, Revised Statutes, into the City of St. Louis. The provisions are not identical in their language. Section 2838, Revised Statutes, is drawn in the most general terms, and the learned counsel for the plaintiff justly states its meaning to be that justices of the peace are to have jurisdiction co-extensive with the county, in the sense that their subpoenas run to the whole county, that their executions are enforceable throughout the whole county, and that they are peace officers of the whole county. But it does not in any manner touch upon or determine the question, within what township actions commenced before justices of the peace shall be brought. The act of 1883, however, does not stop by saying, as Section 2838, Revised Statutes, does, that justices of the peace in cities having one hundred thousand inhabitants, or more, shall have jurisdiction co-extensive with the city, but it says that they 'shall have civil jurisdiction in all cases, except landlord's summons cases, co-extensive with the limits or boundary lines of such city, in the maximum amounts as now prescribed by statute.' This language can mean nothing less than that they are to have jurisdiction of civil actions in the maximum amounts now prescribed by law, throughout the entire limits of the city within and for which they hold their respective offices, with the exception stated. It would be absurd to specify by using the word 'civil,' by excluding the cases of landlords' summons, and by speaking, of 'the maximum amounts now prescribed by statute,' unless the legislature intended to be understood as giving justices the jurisdiction named. The construction contended for by the plaintiff, instead of transferring to the city the jurisdiction which justices possess in the country, would, by implication, narrow their jurisdiction in the city to a smaller jurisdiction than they possess in the country."

The result of *Gazollo v. McCann*, therefore, was that justices of St. Louis, at the time the action involved therein was begun, had, except in proceedings by landlords' summons, jurisdiction co-extensive with the limits of the city. This conclusion was reached though the Revised Code of 1889 contained no section similar to the Act of March 31, 1883. The court held that that omission did not act as a repeal of the Act of 1883, since the

mere omission of certain former statutory provisions from a revision of the entire subject did not repeal those statutory provisions, unless it distinctly appeared that the legislature either revised them or re-enacted something in lieu thereof, citing *Bird v. Sellers*.⁹

This point relating to omissions in revisions of prior statutes is not important to our discussion today, because again a statute similar to the law of 1883, *supra*, is found in Section 2954 of the Revised Statutes of Missouri, 1919, which reads as follows:

Sec. 2954. Jurisdiction, continued.—Every justice of the peace shall have jurisdiction co-extensive with the city in which he shall be elected, except in landlord and tenant cases, and in cases of forcible entry and detainer and of unlawful detainer, which shall be brought in the district where the property to be affected is situated: Provided, however, that such cases may be instituted before a justice of the peace in any district adjoining the district in which said property is situated if the justice of the peace of the district in which said property is situated has failed, by reason of sickness, absence from the city or other cause, to hold court for five days next preceding the date of the filing of the statement or complaint in such suit; in such instances the justice of the peace of such adjoining district shall have jurisdiction of all such cases so instituted before him to the same extent as if said property were in his district; and a statement of the fact that the justice of the peace in the district where the property is situated has not held court for five days next preceding the date of the filing of the statement or complaint of such suit contained in the affidavit filed by the plaintiff therein, shall be *prima facie* proof of such fact.

Finally, what is the attitude of justices in the City of St. Louis as to the territorial jurisdiction in attachment cases? It is that any one of them has such jurisdiction in attachment actions as long as the property involved is somewhere within the city.

What, in brief then, is the result of this investigation? It is that we find but a single statement by any court of this state directly relating to the territorial jurisdiction of justices of the City of St. Louis in attachment actions; that that statement is a dictum; that prior to 1883 there was no special law applying to

⁹ 122 Mo. 23, 30-32, 26 S. W. 668.

the jurisdiction of St. Louis justices in attachment cases, and that, therefore, Section 6127 of the Revised Statutes of Missouri, 1889, was applied to the justices of the peace in St. Louis, with the result that attachment actions in St. Louis when brought before justices had to be brought before a justice of the district wherein the property, credits or effects of the defendants, or either of them might be found, or in any adjoining district there-to, or in the district wherein the defendant resided, or in any adjoining district; that in 1883 a law was passed relating specifically to the jurisdiction of St. Louis justices in attachment actions, which, together with its successors, has been treated as having changed the prior law so that today any justice in St. Louis has territorial jurisdiction of any attachment action as long as the property involved is within the city limits of St. Louis.