



**PennState**  
Dickinson Law

**DICKINSON LAW REVIEW**  
PUBLISHED SINCE 1897

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Volume 36  
Issue 1 *Dickinson Law Review - Volume 36,*  
1931-1932

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10-1-1931

## Priority of Attachments Served on the Same Day

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### Recommended Citation

Nicholas Unkovic, *Priority of Attachments Served on the Same Day*, 36 DICK. L. REV. 41 (1931).  
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol36/iss1/7>

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PRIORITY OF ATTACHMENTS SERVED ON  
THE SAME DAY.

In *Long's Appeal*,<sup>1</sup> several writs of foreign attachment were issued and served on the same day against a person who was in failing circumstances. The question of the case was whether the creditor owning the first writ should take the whole fund, or, on the other hand, whether the proceeds of the sale should be distributed pro rata among the several attachments in proportion to the amount of the judgment obtained in each case. It was decided by the court that the money should be distributed pro rata. Mr. Justice Lewis said in considering this question that:

"It is a principle of the common law, that in judicial and in other public proceedings, there are no fractions of a day, and that all transactions of the same day are, in general, regarded as occurring at the same instant of time. \* \* \* To prevent gross injustice, the order of events will always be investigated. But neither necessity nor justice requires that one creditor should be aided in seizing all the assets of his debtor, to the entire exclusion of the others equally meritorious. For this reason, where judgments are entered on the same day, the law will not inquire into the order of their entry, but all will be regarded as having been entered at the same time, and the money raised by the sale of the debtor's property will be divided pro rata between them."<sup>2</sup>

The general rule was stated somewhat similarly by Thayer, P. J., in *Simpson v. Mancill*,<sup>3</sup> when he stated the following:

"It is a general rule that the law will not take notice of a fraction of a day except in cases where it is

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<sup>1</sup>23 Pa. 297 (1854).

<sup>2</sup>Ibid. p. 299.

<sup>3</sup>17 Phila. 265 (Pa.-1884). See also *Moore v. Bank*, 41 Pa. Super. Ct. 497 (1910).

necessary for the purpose of justice to do so."<sup>4</sup>

*Baldwin's Appeal*<sup>5</sup> is perhaps the case most illuminating upon this point. There the situation was as to the priority of two attachment executions served successively on the same day. In this case one Jones having two judgments against Bonsall, issued two writs of attachment execution upon them to attach six shares of stock. These writs were placed in the hands of the sheriff at 3:25 and 3:30 P. M., respectively, the same day. On the same day, Baldwin, having a judgment against Bonsall, also issued a writ of attachment execution to attach the same stock, which was placed into the hands of the sheriff at 5:45 P. M., the same day. To these writs the sheriff returned that he had served them all on the garnishee on the next day; the first two at 12:30, and the last one at 12:35 P. M. Interrogatories having been filed in each case, the garnishee answered admitting a certain sum in his hands subject to the attachments. Having these facts before it the Supreme Court decided that the rule established in *Long's Appeal*,<sup>6</sup> to the effect that there is no priority between writs of foreign attachment when served on the same day, applies as well to writs of attachment execution, and where they have been so served, no preference can be given, and the distribution of the funds in the hands of the garnishee must be made pro rata.

Turning to the case of *North Shore R. R. v. Pennsylvania Co.*,<sup>7</sup> it is noted that where two judgment creditors of the same debtor issued separate writs of attachment execution on the same day, and one was served on the garnishee on the date of the issue, and the other on the day after, the writ which was served first (i. e., the one which was served the day before the second one) was held to have priority of lien on the funds in the hands of the garnishee. This is a correct rule for, as the court noted, the lien of a writ of attachment execution upon the property of a debtor in the

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<sup>4</sup>Simpson v. Mancill, *supra*, at p. 265.

<sup>5</sup>86 Pa. 483 (1878).

<sup>6</sup>See note 1 *supra*.

<sup>7</sup>70 Pa. Super. Ct. 405 (1918).

hands of a garnishee, has its origin in the service of the writ.

Thus it appears that in Pennsylvania insofar as writs of attachment execution and foreign attachment are concerned, the rule is that when there are two or more of them served on the same day, even though one be prior in point of time to the other or others, the law will not observe any fractions of a day.

In the case of *Underhill v. McManus*,<sup>8</sup> an attachment under the Fraudulent Debtors Act of 1869<sup>9</sup> was left with the sheriff at 10:30 A. M., and was served upon the garnishee at 10:55 A. M., on the same day. At 11:13 A. M., the same day, a writ of foreign attachment was left with the sheriff, who served it on the garnishee at 2:50 P. M., that afternoon. It was held by the court that the attachment under the Act of 1869 was entitled to priority over the foreign attachment.

This case, then, provides an exception to the general rule against the divisibility of a day. The court's explanation for its decision is the following comment on two of the above cited cases:

"In *Long's Appeal*, 23 Pa. 297 (1854), it was held that, as between several writs of foreign attachment served on the same day, there was no priority of payment, and the decision is based upon the principle that in judicial and other public proceedings there are no fractions of a day, and that all transactions of the same day are in general regarded as occurring at the same instant of time.

"In *Baldwin's Appeal*, 86 Pa. 483 (1878), it was held that the same rule applies to writs of attachment execution. In that case it was considered that the process of attachment execution had an approximate relationship to that under a writ of foreign attachment, and was to be distinguished from a writ of fieri facias, which the Act of June 16, 1836, provides shall be a lien

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<sup>8</sup>175 Pa. 39, 34 Atl. 308 (1896).

<sup>9</sup>Act of March 17, 1869, P. L. 8, 12 P. S. 2711.

from the time of its receipt by the officer executing it. We are urged to apply the rule of *Long's Appeal* and *Baldwin's Appeal* to the facts of the present case. The process under the Act of 1869 (March 17, P. L. 8, 12 P. S. 2711) differs materially, however, from foreign attachment and attachment execution in one important respect, and in this respect it is more like the writ of fieri facias. The writ of foreign attachment under the Act of 1869, at least as between successive executions under the Act of June 16, 1837, sec. 37, are only liens *from the time of service*, while the attachment under the Act of 1869, at least as between successive writs under that act, is a lien *from the time the writ comes into the hands of the proper officer for service.* \* \* \*  
“\* \* \* In case there are several writs under the Act, they have priority ‘in the order of time in which they have been issued to the said officer.’ (This is under the Act of 1869, supra). That can only be the case upon the theory that each writ becomes a lien at the time the officer receives it.”<sup>10</sup>

In conclusion, then, it appears that in reference to either writ of attachment execution or foreign attachment, if two or more such writs are served against the same person on the same day, no writ acquires priority over the other, even though one in point of time is served before the other. But where a writ is issued under the act of 1869 and is served on the same day as a foreign attachment, somewhat prior in time to the latter, the writ of attachment under the Act of 1869 will take priority over said foreign attachment, the court in *Underhill v. McManus*, speaking of a writ under said Act as being effective when given to the sheriff and that as said Act used the word priority it must mean that there is a priority between such writs even though issued on the same day.

NICHOLAS UNKOVIC.

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<sup>10</sup>Ibid. p. 41.