

been given as they should have been, when the papers were tendered; and as it appears they would have been, but for the attachment; that is to say, from that day until the 13th of October, 1817, when the judgment was rendered in the attachment case.

It thus appears sufficiently evident, that confining our consideration to the contract alone, Chase must be charged with interest. But it is said, that the attachment restrained him from paying the debt; and therefore, he cannot be burthened with interest during the continuance of that restriction. The Legislature have declared, that a debt may be attached in the hands of a debtor before it is due. 1795, ch. 56, s. 6. And, consequently, in such cases, the plaintiff may obtain judgment before the debt becomes due with a stay of execution. *Com. Dig. tit. Attachment, G.* But they have said nothing about interest on any debt that may be attached. Whether the laying of an attachment of itself suspends the claim of interest upon the debt attached, is the question next to be investigated and determined.

All the other States of our Union have adopted a form of judicial procedure having the same object as the attachment of Maryland; and hence we may with as much, perhaps more, propriety deduce illustrations and principles from their adjudications upon this subject than from those of England. In every instance, however, it is conceived that such adjudications, whether American or English, must be received with caution; because of the dissimilarity of the judicial forms, and the differences in many particulars of the code upon which they are predicated.

A decision of the Supreme Court of Pennsylvania has been much relied on, in which it is laid down as a general rule, in that State, that a garnishee is not liable for interest while he is restrained from the payment of his debt by the legal operation of a foreign attachment. *Fitzgerald v. Caldwell*, 2 *Dall.* 215. This same tribunal has furnished us with an exposition of the reason of this rule. Where the creditor, (it is said,) cannot enforce payment, nor the debtor pay consistently with the law, or without disobeying its positive and unqualified injunctions, as by going into an enemy's country to make payment, the debt shall not carry interest; because interest is paid for the use or forbearance  
**343** \*of money. Therefore, where a person is prevented by law, as in that instance, during the Revolutionary War, from paying the principal, he shall not be compelled to pay interest during the continuance of the prohibition. And upon this analogy and these reasons, it is said, that the garnishee shall not be compelled to pay interest pending the attachment; *Hoare v. Allen*, 2 *Dall.* 102; unless he has been guilty of fraud or collusion, or has himself occasioned some unreasonable delay; which is in no case to be presumed, but must be proved. *Fitzgerald v. Caldwell*, 2 *Dall.* 215.