A treatise on the law of suits by attachment in the United States

Drake Charles D
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Author: Drake Charles D

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A TREATISE

ON THE LAW OF

SUITS BY ATTACHMENT

IN

THE UNITED STATES.

BY

CHARLES D. DRAKE, LL.D.,

CHIEF JUSTICE OF THE UNITED STATES COURT OF CLAIMS.

SIXTH EDITION,

REVISED, CORRECTED, AND ENLARGED;

WITH

AN APPENDIX,

CONTAINING THE LEADING STATUTORY PROVISIONS OF THE SEVERAL STATES
AND TERRITORIES OF THE UNITED STATES, IN RELATION
TO SUITS BY ATTACHMENT.

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JOHN WILSON AND SON, CAMBRIDGE.
TO

MY BROTHER-IN-LAW,

ALEXANDER H. McGUFFEY, ESQ.,

OF CINCINNATI,

AS AN EXPRESSION OF ADMIRATION, RESPECT,
AND AFFECTION,

THIS WORK IS DEDICATED.
PREFACE TO THE SIXTH EDITION.

The probability, if not certainty, that this is the last edition of this work which may be edited by me, has not diminished, but rather increased, my desire to make it more worthy of the favor with which the former editions have been received by the courts and Bar of the country. For that favor I would return my grateful acknowledgment, with the assurance that on no previous edition has more careful and earnest labor been bestowed than on this.

From the Reports published since the last edition was prepared, and others, five hundred and fifty new cases have been gathered; several passages have been rewritten; new topics have been introduced and treated; the Index has been amended and enlarged; and the Appendix brought into conformity with the present attachment laws of the several States and Territories.

Though new matter equivalent to fifty pages, or more, has been added, the pages of the Treatise number now but eighteen more than those of the Fifth Edition. This has resulted from leaving out a number of judicial opinions,—heretofore occupying a considerable space,—and also a good many statements of illustrative cases. This has been done, however, only where it seemed clear to me that the practical usefulness of the book would not thereby be impaired. In every instance a sufficient num-
ber of the cases have been retained in the text to exemplify and elucidate the doctrines stated; and the references to the titles of those omitted have been carefully preserved in the notes.

My belief is, that the work is now more deserving than ever before of the favorable regard of those for whose use it is intended.

Washington, D. C., October, 1884.
The necessity for a work on the law of Suits by Attachment in the United States occurred to me early in my professional life; but I shared the then prevalent impression of the Bar, that the Attachment Acts of the several States were so dissimilar as to baffle any attempt at a systematic treatise on that subject, based on the jurisprudence of the whole country and adapted for general use. Some years since, however, in preparing for the argument of a question of garnishment, an examination of the Reports and legislation of a majority of the States satisfied me—and all subsequent researches have but confirmed the opinion—that the diversity in the statutes constituted in reality no impediment of any moment to the successful preparation of such a treatise. The purpose to prepare this volume was then formed, and has been prosecuted, at irregular intervals, in the midst of other and more pressing avocations, until the result is now submitted to the profession.

The value of the proceeding by attachment is everywhere asserted in the reported opinions of our higher State courts, and is universally and practically illustrated in the history of the Colonial, Territorial, and State legislation of this country. Among the early statutes enacted, have always been those authorizing the preliminary attachment of the property of debtors; and the general tendency has been, and is, to enlarge the
scope and increase the efficiency of this remedy. Upon these grounds alone the importance of this subject might, if necessary, be amply vindicated; but on that point no doubt has at any time disturbed the prosecution of my task. My conviction is, that on no branch of the law is a treatise more needed by the profession in this country than on this; and it is gratifying to know that such is the general opinion of my professional brethren, wherever the proposed preparation of this work has been known. It is now to be decided whether this attempt to supply an acknowledged need will be regarded with equal favor.

The materials here wrought together are almost wholly American. Great Britain, the fountain of, and exercising continually a marked influence over, our jurisprudence generally, contributes in this department comparatively nothing. In that country, the limited proceeding under the custom of London gives rise to few cases which find their way into the courts of Westminster Hall. Here, however, the universal use of this remedy fills our Reports with cases presenting every variety of questions, and the lapse of time and the accumulation of adjudications seem to make no sensible diminution in the annual number of reported cases, nor any great difference in their novelty or their interest. Hence a work of this description reflects in a high degree a legal system and a branch of jurisprudence peculiarly our own; and I confess to somewhat of satisfaction at being instrumental in presenting to the Bar of the United States a volume which, without intentionally slighting what is to be found in the English Reports on the subject, may be justly claimed to be thoroughly American....

CHARLES D. DRAKE.

St. Louis, Missouri, July 1, 1851.
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