

Opinion No. 16-1866

September 9, 1916

BY: H. S. CLANCY, Assistant Attorney General

TO: Mr. Bert D. Richards, Gallup, New Mexico.

Practice in justices of the peace courts in garnishee cases.

OPINION

{*418} This office is in receipt of your letter of the 7th instant in which you ask for its opinion upon a matter of practice in a justice of the peace court where a money judgment having been rendered against the defendant and against a third party who had been duly served as garnishee, the garnishee having failed and refused to make any return to the writ served upon him, and as I take it, judgment by default having been rendered against him, whether an appeal bond filed by the defendant, will also suspend all proceedings as to the execution of the judgment against the garnishee.

It is the opinion of this office that the defendant having appealed to the district court and furnished a good and sufficient bond, such {*419} action will suspend any action by way of execution against the garnishee, nor do we believe that the garnishee should be required to pay into court the amount of the judgment. The plaintiff would seem to be amply protected by the appeal bond, even though the garnishee should hereafter dissipate the funds in his hands, and of course, in no event could the money paid into court be turned over to the plaintiff, but must remain in the custody of the court until the final determination of the cause. I have made some examination of authorities upon this question and they seem to confirm the view I take of the matter.