omitted would be alike inappropriate and untrue if used as descriptive of the offence charged in the indictment.

Yielding to the authorities above cited, we shall hold that the court erred in quashing the indictment.

Judgment reversed, and the case remanded for trial.

FOSTER v. SAFFELL.

Knoxville, September, 1851.

Garnishment—Practice—Acts of 1794, ch. 1, 1803, ch. 6, and 1815, ch. 20. In obedience to the notice the garnishee must appear in court and be examined. An ex-parte statement prepared in the absence of the plaintiff and filed as an answer is not a compliance with the statutes regulating the practice upon this subject.

Garnishment—Answer. As the answer of the garnishee is in itself conclusive upon the rights of the parties, it should be reduced to writing and approved by him. [Cited in Moses v. McMullen, 4 Coldw. 245; Pickler v. Rainey, 4 Heisk. 339; Mayor, etc., v. Potomac Ins. Co., 2 Baxt. 302.]

Same—Appeal. From the judgment rendered in a proceeding of this nature either party may appeal.

Cited in: 12 Heis., 288.

(90) At the May term, 1851, of the circuit court for Blount county, Anderson, R. M., judge, presiding, there was a judgment in this case for the defendant, and the plaintiff appealed in error.

Rodgers & Boyd, for Foster; Lyon, for Saffell.

Totten, J., delivered the opinion of the court.

H. Foster recovered a judgment before Justice Rooker of Blount county on the 20th January, 1851, for $130.

In a proceeding thereon, by garnishment against Clementine A. Saffell, before said justice, judgment was rendered against her upon her answer, for $131.12.

The garnishee appealed to the circuit court of Blount, while she filed a new answer, and thereon the judgment of the justice was annulled, and judgment rendered in her favor that she go hence, etc., and from this judgment the plaintiff has appealed in error to this court.

It is evident from the record that all the answer before the justice was not reduced to writing by him. It appears on its face to be imperfect. And as to the answer in the circuit court, it was not made upon examination in open court, but is an ex parte statement prepared and filed for an answer.

(91) The practice adopted was not in conformity to the provisions of the statutes on this subject. See acts 1794, ch. 1; 1803, ch. 6; 1815, ch. 20.

The garnishee must appear before the court and be examined as to what he is indebted to the defendant in the execution, what effects of his are in his possession, or in the possession of any other person to his knowledge. The plaintiff has the right to his public examination before the court; and it is manifest that this mode of proceeding contemplated by the statutes will be much more likely to elicit the true state of the facts than the ex parte and often imperfect statement of the garnishee, prepared in the absence of the plaintiff and filed in court for an answer.

2. And as the answer is in itself conclusive upon the rights of the parties, it should be reduced to writing and be approved by the garnishee. This is material to the right of the party, that it may appear in a revising court whether the judgment rendered was properly authorized by the answer.

3. We think either party has the right of appeal to a revising court, to correct any error that may have been committed by the inferior court, either as to the answer or the judgment thereupon.

The proceeding in this case before the justice was erroneous and unjust to the garnishee, and the proceeding before the circuit court was erroneous and unjust to the creditor.

The judgment of the circuit court will be reversed and the case be remanded to that court for further proceeding.

KEITH v. SMITH.

Knoxville, September, 1851.

Debtor and Creditor—Mutual Demands. Smith being the holder of a note upon Keith for $175, and Keith having an unliquidated account against Smith, Smith, contrary to the remonstrances and protestations of Keith, entered a credit upon the note of $34, as the amount of the account, and obtained judgment for the remainder of the note, which judgment Keith paid. Held, that the credit was improperly entered upon the note, and that it was no discharge of the account or any part thereof.

Set-Off—What Demands May Be Set-Off. A set-off being in the nature of a cross-action, it can only be allowed in a case of mutual debts in the same right, and subsisting at the commencement of the litigation; or, if the demand of the defendant fall due after commencement of the action, the set-off may be made