

who "all the heirs of Joseph Draper" are. I suggest that the granting clause contain the names of each and all of the heirs of Joseph Draper, and then conclude:

"being all the heirs at law of Joseph Draper, deceased."

I suggest that the State Game Refuge order attached to lease No. 938, wherein Louise M. Williams is lessor, be corrected in the following respects:

1. Said lands are situated in Noble and Moulton townships, not in *St. Marys* township, Auglaize county.
2. Said lease commenced on the 11th day of February, 1927, and not on the 20th day of January, 1927, and extends to the 11th day of February, 1932, and not to the 20th day of January, 1932.

Respectfully,
EDWARD C. TURNER,
Attorney General.

211.

APPROVAL, BONDS OF GUERNSEY COUNTY, OHIO—\$18,839.07.

COLUMBUS, OHIO, March 21, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

212.

GARNISHMENT—WRIT OF ATTACHMENT, NAMING STATE OF OHIO AS GARNISHEE, IS IN EFFECT A SUIT AGAINST THE STATE AND CANNOT BE ENFORCED.

SYLLABUS:

The Kent State Normal School may not be made a garnishee in an action before a Justice of the Peace against an employe of such school for the purpose of subjecting money owing by the school to the employe to the payment of a judgment against the employe.

COLUMBUS, OHIO, March 21, 1927.

MR. JOHN B. GILLESPIE, JR., *Business Manager, Kent State Normal College, Kent, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of March 16, 1927, wherein you request my opinion upon the following question:

"Will you be kind enough to forward an opinion as to whether or not the wages of an employe of the Kent State Normal School can be attached, naming the State of Ohio as garnishee?"

By sections 7901-1, et seq., of the General Code, provision is made for "the creation and establishment of one additional state normal school to be located in eastern Ohio." Section 7901-6 provides:

"The said normal school shall be supported by such sums and in such manner as the General Assembly may from time to time provide."

Under these sections the Kent State Normal College was established, and an examination of such sections discloses that the school in question is a state institution.

Sections 10265, et seq., of the General Code deal with the subject of garnishment in actions brought before a Justice of the Peace. Section 10265, in speaking of those who may be named in the affidavit as garnishee, includes only persons, partnerships and corporations. Section 10266, which deals with the service of the order of attachment and notice made upon the garnishee, provides only for such service upon persons, partnerships and corporations, and no provision is made for serving such order and notice upon the State or any officer or agent of the state.

By section 10267, General Code, the garnishee is required to appear before the justice and disclose the amount, if any, owing by the garnishee to the defendant in the action whether due or not. If the garnishee (that is to say, the assumed debtor of the defendant) in the action does not appear, it is provided by section 10274, that the justice may proceed against him for contempt.

Section 10276, General Code, reads as follows:

"If the garnishee fails to appear and answer, or if he appears and answers and his disclosure is not satisfactory to the plaintiff; or if he fails to comply with the order of the justice to deliver the property and pay the money owing into court, or give the bond required in the next preceding section, the plaintiff may proceed against him by an action in his own name, as in other cases. Thereupon, such proceedings may be had as in other actions, and judgment be rendered in favor of the plaintiff, for the amount of the property and credits of every kind of the defendant in the possession of the garnishee, and for what appears to be owing by him to the defendant, and for the costs of the proceedings, against the garnishee."

From this it appears that no purpose can be served by the service of the notice, order and answer of the garnishee, except the same be made the foundation of an order for the payment of money, or the delivery into court of property owing or belonging to the defendant. No one will contend that the State will be subject to punishment by a Justice of the Peace for failure to appear, and no remedy for failure or refusal to obey an order to pay any money or deliver property may be had, except by *action* against the garnishee *in his own name*, and in the case described in your letter, the State of Ohio was named as garnishee, and the enforcement of any order against the garnishee would *necessitate bringing a suit against the State*.

Article I, Section 16, of the Ohio Constitution as amended September 3, 1912, reads in part as follows:

"Suits may be brought against the state, in such courts and in such manner, as may be provided by law."

This section of our constitution was passed upon by the Supreme Court of Ohio in the case of *Raudabaugh vs. The State of Ohio*, 96 O. S., 513, the syllabus reading:

"1. A state is not subject to suit in its own courts without its express consent.

2. The provision of the Ohio Constitution, Article I, Section 16, as amended September 3, 1912, that 'Suits may be brought against the state, in such courts and in such manner, as may be provided by law,' is not self-executing; and statutory authority is required as a prerequisite to the bringing of suits against the state."

Pursuant to this constitutional provision the legislature has enacted no legislation permitting the State to be sued, and the law is that the state cannot be sued without its consent.

In an opinion by this department dated February 29, 1916, (Opinions of the Attorney General for 1916, page 348) it was held as follows:

"The state may not be made a garnishee in an action before a justice of the peace against an employe of the state for the purpose of subjecting money owing by the state to the employe to the payment of a judgment against the employe."

At page 350 of the opinion it was said as follows:

"It is held in *Secor vs. Witter*, 39 O. S., 218, that a garnishee is not a party to the original action, but is the party defendant in an action under section 10276, G. C., upon an order to pay money or deliver property into court. Any order of attachment against an officer or agent of the state in such action as is here under consideration could not in effect be otherwise than an action against the state. The state would, of necessity, be the real party against which any judgment therein would operate. Hence the court would be without jurisdiction in such action. It therefore follows that though an officer or agent of the state answer to an order of attachment, no action could be maintained upon an order to pay into court, founded upon such answer, and the same would therefore be unenforcible. The rule that the state cannot be sued without its consent is doubtless broader in its import and operation than the language in which it is stated might at first suggest. It is conceived that the meaning of this rule is that the state is not in any way subject to the jurisdiction or authority of the courts, and hence a justice's court is without power to serve notice or order of attachment upon an officer or agent of the state, as such, in a proceeding where the real party sought to be affected thereby is the state."

Since, therefore, Kent State Normal School is a state institution, and since the legislature has not made any provision whereby the state may be sued, the conclusions reached in the above opinion, and the reasons therefor, are still good law, and I am of the opinion that the Kent State Normal School may not be made a garnishee in an action before a Justice of the Peace against an employe of such school for the purpose of subjecting money owing by the school to the employe to the payment of a judgment against the employe.

Respectfully,

EDWARD C. TURNER,

Attorney General.