

**Hooton Vs. Will**

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**Court :** US Supreme Court

**Decided On :** 1789

**Appeal No. :** 1 U.S. 450

**Appellant :** Hooton

**Respondent :** Will

**Judgement :**

HOOTON v. WILL - 1 U.S. 450 (1789)

U.S. Supreme Court HOOTON v. WILL, 1 U.S. 450 (1789)

1 U.S. 450 (Dall.)

Hooton

v.

Will

Supreme Court of Pennsylvania

September Term, 1789

DOMESTIC Attachment. This cause being removed by Certiorari from the Common Pleas, now came before the Court on the following Case, stated for their opinion:

'The term of September, in the Common Pleas for the county of Philadelphia, in the year of our Lord 1782, began on the 4th day of September, and on the 16th day of September, in the same year, Judgment was entered in the Court aforesaid, in an action then depending at the suit of the Plaintiff, above named, against John Levinz, which action had been brought to the term of June, in the same year. On the 5th day of the same month of September, a Domestic Attachment issued out of the same Court, at the suit of John M'Farland against the said John Levinz, and was served on the lands of the Defendant on the same day at 11 o'clock in the morning. No auditors were ever appointed, nor any other proceedings had, under the said attachment, untill a similar case was stated for the opinion of the Court of Common Pleas for the county aforesaid, the 9th day of November, in the year of our Lord

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1784.\* At the time of rendering the Judgment aforesaid, the said John Levinz was seized of the aforesaid lands in see, and so continued untill the same were sold under the same Judgment, by the said William Will, as Sheriff of the county, in whose hands the money remains. 'The question submitted to the Court is, whether the said Benjamin Hooton, or the said John M'Farland, is entitled to receive the money from the Sheriff? The case was argued at the last term, by Lewis, for the Plaintiff, and Ingersol, for the Defendant, when two questions were made; 1st, Whether Hooton's Judgment related to the first day of the term, so as to exclude the Domestic Attachment, in his favor: And, 2ndly, Whether the Domestic Attachment, for want of the regular continuances, was not out of Court? Lewis contended, 1st, That the Act of Assembly, and English statute, with respect to docketing Judgments, extend only in favour of subsequent purchasers for a valuable consideration, 1 State Laws 463. 3 Black. Comm. 420. 14 Vin. tit. Judgment 616. Cro. G. Hetl. 72. S. C. under the Bankrupt Laws there is a relation to the time of the act of bankruptcy; and yet the legal relation of a judgment to the first day of the term, was held sufficient to defeat the claim of the Commissioners. Sid. 271. Skin. 257. 2ndly, That from the case stated, it does not appear that Auditors have been appointed under the Domestic Attachment. This, however, is

not so material, as that there is no continuance of the cause. There is not, indeed, any law which directs a Judgment in a Domestic Attachment; but since on the report of the Auditors, the business is to be settled, till that is done, is necessary to continue the action; as in the cases of a writ of Partition, and an action of account. See 1 State Laws 121. Ingersol, on the first point, adverted to the opinion of the Court of Common Pleas, (see ant. 187) and urged that the Domestic Attachment Law, 1 State Laws 126. was to be considered as applying to an insolvent debtor, the great outlines of law with respect to a bankrupt. From the moment that the attachment is in the hands of the Sheriff, the property ceases to be the Defendant's, and must be disposed of agreeably to the Act. See Comb. 33. Skin. Under a commission of Bankrupts, which is thus analogous to the Domestic Attachment, creditors are to be considered as purchasers, and nothing can exclude a general distribution, but an execution executed. See Co. Bank. Law. Fictions, indeed, ought never to be allowed to work an injury; but if the technical relation of a Judgment to the first day of the term, were suffered in a case of this nature, all the expence and trouble of a Domestic Attachment would be rendered oppressive and nugatory.

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2nd. With respect to the second point, the Act of Assembly, as to the appointment of auditors, is merely directory; and continuances are matters of mere form, which may be entered at any time; so that the Court will even presume it to have been done. 2 Har. C. P. 312. 1 Stra. 13.. 2 Barn. Not. 172. 1 Stra. 136. 1 Sid. 53.60 See 18 Vin. tit. Purchasor. Preced. in Chan. 478. Schlosser vs. Leshor ant. 411.

Lewis, in reply, still urged, that the Acts for docketing Judgments, and recording Deeds, were only made in favor of purchasers; and although, generally speaking, every man who does not take by descent, is called in law, a purchasor, he contended, that the object of those acts was not of that general import, but merely to secure persons who had paid an actual and immediate consideration for the premises, and not to aid those who, by process of law, were endeavouring to recover an antecedent debt, which was the case in a domestic attachment. The attachment when levied is binding between the parties; but it does not affect the

legal relation of a Judgment obtained by another person; and the case cited from Co. B. L. is that of an execution taken out, but not levied. See Prec. in Chan. 478.

With respect to the omission of continuances, he answered, that if there was any thing to enter them from, and day has been given to the Defendant from time to time, then the doctrine and authorities of the adverse Counsel would apply. But, he insisted, that where day was given to the Defendant, and, afterwards, nothing was done in the cause, the continuances could not be arbitrarily entered in the manner suggested by the Defendant's Counsel.

After consideration, The Chief Justice delivered the opinion of the Court, in which he declared, that he and his brethren were unanimously of opinion with the Plaintiff, on the case stated; and directed Judgment to be entered accordingly.

Judgment for the Plaintiff. Footnotes

[ [Footnote \\*](#) ] See the case, ant. 187, where, by an error of the Press, it is said to be a Foreign, instead of a Domestic attachment. The opinion given in the court of Common Pleas, was only upon the first point made by the Plaintiff's counsel, (merely I believe, at the time of the argument) but no judgment was regularly pronounced.

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