

Georgia Vs. Brailsford

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Court : US Supreme Court

Decided On : 1792

Appeal No. : 2 U.S. 402

Appellant : Georgia

Respondent : Brailsford

Judgement :

Georgia v. Brailsford - 2 U.S. 402 (1792)

U.S. Supreme Court Georgia v. Brailsford, 2 U.S. 2 Dall. 402 402 (1792)

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2 U.S. (2 Dall.) 402

SYLLABUS

An injunction was granted on the application of the State of Georgia to stay money in the hands of the Marshal of the State of Georgia which was claimed by that state under the confiscation act for the purpose of enabling the state to have the claim decided at law.

This was a bill in equity filed by "His Excellency Edward Telfair, Esq., Governor and Commander in Chief in and over the State of Georgia, in behalf of the said

state, complainant," against Samuel Brailsford, Robert Wm. Powell, and John Hopton, merchants and co-partners, and James Spalding, surviving partner of Kelsall & Spalding, defendants. The bill set forth the following case:

"That on 4 May, 1782, the State of Georgia being then free, sovereign, and independent, enacted a law entitled 'An act for inflicting penalties on and confiscating the estates of such persons as are therein declared

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guilty of treason, and for other purposes therein mentioned."

That, among other things, this law contained the following clauses:

"And whereas there are divers estates and other property within this state, belonging to persons who have been declared guilty or convicted in one or other of the United States of offenses which have induced a confiscation of their estates or property within the state of which they were citizens, be it therefore enacted by the authority aforesaid that all and singular the estates, both real and personal, of persons under this description, of whatsoever kind or nature, together with all rights and titles, which they may, do, or shall hold in law or equity, or others in trust for them, and also all the debts, dues and demands due or owing to British merchants or others residing in Great Britain (which shall be appropriated as herein after mentioned) owing or accruing to them be confiscated to and for the use and benefit of this state in like manner and form of forfeiture as they were subjected to in the states of which they respectively were citizens, and the monies arising from the sales which shall take place by virtue, and in pursuance of this act to be applied to such uses and purposes as the legislature shall hereafter direct."

"And be it further enacted that all debts, dues, and demands due or owing to merchants or others residing in Great Britain be and they are hereby sequestered, and the commissioners appointed under this act, or a majority of them, are hereby empowered to recover, receive, and deposit the same in the treasury of this state in the same manner and under the same regulations as debts confiscated, there to remain for the use of this state until otherwise appropriated by this or any future

house of assembly."

"And whereas there are various persons, subjects of the King of Great Britain, possessed of or entitled to estates real and personal, which justice and found policy require should be applied to the benefit of this state, be it therefore enacted by the authority aforesaid that all and singular the estates, real and personal, belonging to persons being British subjects, of whatsoever kind or nature, which they may be possessed of, except as before excepted, or others in trust for them, or that they are or may be entitled to in law or equity, as also all debts, dues, or demands owing or accruing to them, be confiscated to and for the use and benefit of this state, and the monies arising from the sales which shall take place by virtue of and in pursuance of this act, to be applied to such uses and purposes as the legislature shall hereafter direct."

"That by the operation of these clauses, all the debts, dues, and demands, of the citizens of Georgia to persons who had

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been subjected to the penalties of confiscation in other states, and of British merchants and others residing in Great Britain, and of all other British subjects, were vested in the said state."

"That James Spalding, a citizen of Georgia, and surviving co-partner of Kelsall & Spalding, was indebted to the defendants in the penal sum of 7,058 5d. upon a bond dated the of 1774, which debt, by virtue of the said recited law, was transferred from the obligees and vested in the state, Brailsford being a native subject of Great Britain, constantly residing there from the year 1767 'till after the passing of the law; Hopton's estate real and personal (debts excepted) having been expressly confiscated by an act of the Legislature of South Carolina, and Powell coming within the description of persons whose estates, real and personal (debts excepted), were also confiscated by acts of the Legislature of South Carolina if after refusing to take the oath of allegiance, they returned to the state."

"That an action had been brought upon the bond by Brailsford, Powell, and Hopton against James Spalding, as surviving partner of Kelsall & Spalding, in the Circuit Court for the District of Georgia, of term 1791, in which action there was a plea, demurrer to the plea, joinder in demurrer, and judgment thereupon for the plaintiffs."

"That the state had never relinquished its claim to this debt, but, on the contrary, had asserted it by divers acts of the legislative, executive, and judicial departments, and particularly by directing the Attorney General to apply for a rule to be admitted to assert the claim in all suits brought in any court for debts within the descriptions of the confiscation law above cited."

"That the Attorney General applied to the circuit court for the admission of the state as a party to defend its claim in the said suit of Brailsford and others versus Spalding, then depending there, which application was rejected; and that in that suit as well as divers other suits, recoveries were had against citizens of the state by British merchants for debts within the descriptions of the confiscation law upon the sole principle of debtor and creditor, and without any reference to the right and claim of the state."

The bill proceeds to charge a confederacy between the parties to the suit in the circuit court to defraud the state, and that in pursuance thereof the plaintiffs had issued execution against the defendant and the defendant had confederated with them not to take out a writ of error so that the defendant's property will be levied on and disposed of and the state will be defrauded of its just claim thereon.

The bill then suggests the general foundation for the jurisdiction on the equity side of the court, puts the proper interrogatories,

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and concludes with praying

"That any levy or further levies under the said execution, and any sales in pursuance of a levy, and any monies already raised or that may be raised thereon

may be stayed in the hands of the marshal of the said circuit court, by an injunction from this Honorable Court. And that the said marshal be directed to pay such sum or sums raised as a aforesaid to the treasurer of the said State of Georgia to and for the use of the same, and that the said James Spalding be decreed to pay to the said treasurer the balance which may be due on the bond aforesaid for the use aforesaid. And that the said state may be further or otherwise relieved in all and singular the premises as the nature and circumstances of the case shall require and as to the court shall seem meet."

With the bill, there was filed an affidavit made by Mr. John Wereat (the agent for Georgia) affirming "that the allegations therein contained are true," and Dallas, for the state, moved that an injunction might issue to the circuit court to stay further proceedings and also to the Marshal of the Georgia

District to stay the money in his hands if he should have levied or shall levy, the same on any execution issued in the cause of *Brailsford v. Spalding*.

The motion was opposed by Randolph for the defendants, and after argument, the judges delivered their opinions *seriatim* on t11 August, 1792.

JOHNSON, JUSTICE.

In order to support a motion for an injunction, the bill should set forth a case of probable right and a probable danger that the right would be defeated without this special interposition of the court. It does not appear to me that the present bill sufficiently claims such an interposition. If the state has a right to the debt in question, it may be enforced at common law notwithstanding the judgment of the circuit court, and there is no suggestion in the bill, though it has been suggested at the bar, that the state is likely to lose her right by the insolvency either of Spalding, the original debtor, or of Brailsford, who will become her debtor for the amount, if he receives it, when in law he ought not to receive or retain it.

Nor does the bill state any particular confederacy or fraud. The refusal to admit the Attorney General as a party on the record was the act of a competent court, and it is not sufficient barely to allege that the defendant has not chosen to sue out a writ

of error.

The case might perhaps, be made better, but as I can only know at present the facts which the bill alleges and which the affidavit supports, it is my opinion that there is not a proper foundation for issuing an injunction.

IREDELL, JUSTICE.

I sat in the circuit court, when the judgment was rendered in the case of *Brailsford* v.

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Spalding, but I shall give my opinion on the present motion detached from every previous consideration of the merits of the cause.

The debt claimed by the plaintiffs below was likewise claimed by the State of Georgia. The state applied to be admitted to affect her claim, but the application was rejected; nor has any writ of error been instituted upon the judgment. These facts, however, are only mentioned to introduce this remark, that the circuit court could not with propriety sustain the application of Georgia, because whenever a state is a party, the Supreme Court has exclusive jurisdiction of the suit, and her right cannot be effectually supported by a voluntary appearance before any other tribunal of the Union. Not being a party nor capable of resorting as a party to the circuit court, it is very much to be questioned whether the state could bring a writ of error on the judgment there, even if her claim appeared on the record.

Every principle of law, justice, and honor, however, seem to require that the claim of the State of Georgia should not be indirectly decided, or defeated by a judgment pronounced between parties over whom she had no control, and upon a trial in which she was not allowed to be heard. If, indeed, the court could not devise a mode, for admitting a fair investigation and determination upon that claim, it would be useless to grant an injunction. But I think a mode may easily be prescribed in strict conformity with the practice and principles of equity.

It was in the power of the defendant in the circuit court to have filed a bill of interpleader in order, for his own safety, to settle the rights of the contending parties; but neither in that form nor by instituting a suit herself could Georgia have derived the benefit of supporting her claim in her own way, before any other than the Supreme Court. In this Court, therefore, we ought now to place the state upon the same footing as if a bill of interpleader had been regularly filed here, which can be done by sustaining the present suit, and when the parties are all before us, we may direct a proper issue to be formed and tried at the bar. Thus, justice will be done to Georgia and an irreparable injury may be prevented, while the adverse party, even if he ultimately succeeds, can only complain of a short delay.

With this view, I think that an injunction should be awarded to stay the money in the hands of the marshal till this Court shall make a further order on the subject.

BLAIR, JUSTICE.

The State of Georgia seems to have done all that she could to obtain a hearing. An application was made to the circuit court in the nature of a claim to interplead, but being refused, her alternative, under all the circumstances of the case, is an appeal to the equitable jurisdiction of the Supreme

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Court. It is true, perhaps, as the counsel has suggested, that the defendant below pleaded the confiscation act of Georgia in bar to the action, but it is a sufficient answer to this argument that the state was not a party, and no right can be defeated in law unless the party claiming it, has himself an opportunity to support it.

If the State of Georgia was entitled to the bond, she is equally entitled to the money levied by the marshal in satisfaction of the bond, or rather of the judgment rendered upon it. And as the execution directs the marshal to pay the amount to the plaintiffs below, I can perceive no other mode of preventing a compliance, while we inquire into the right of receiving the money, than that of issuing an injunction to stay it in the hands of the officer.

It appears to me to be too early, likewise, to pronounce an opinion upon the titles in collision, since it is enough, on a motion of this kind, to show a colorable title. The State of Georgia has set up her confiscation act, which certainly is a fair foundation for future judicial investigation, and that an injury may not be done which it may be out of our power to repair, the injunction ought, I think, to issue till we are enabled by a full inquiry to decide upon the whole merits of the case.

WILSON, JUSTICE.

I confess, that I have not been able to form an opinion which is perfectly satisfactory to my own mind upon the points that have been discussed. If Georgia has a right to the bond, it is strictly a legal right; but to enforce a strictly legal right, the present seems, at the first blush, to be an awkward and irregular proceeding. Again, Georgia had not a right or she had a right to be admitted to a hearing in the circuit court, but in the former case it would be no ground of complaint that her application was rejected, for she is bound by the law, and in the other case she would be entitled to bring the subject before us as a court of law, since she was refused the exercise of a legal right.

It is true that under the federal Constitution, an inferior tribunal cannot compel a state to appear as a party; but it is a very different proposition to say that a state cannot, by her own consent, appear in any other court than the Supreme Court. The general rule applies among all sovereigns, who, as equals, are not amenable to courts of each other, and yet I remember an action was instituted and sustained some years ago in the name of Louis XVI, King of France, against Mr. Robert Morris in the Supreme Court of Pennsylvania.

Under these impressions, I am disposed to think that the State of Georgia ought rather to have sued out a writ of error than to have asked for an injunction. But still, in the existing

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circumstances of the case, I have no objection to retain the money within the power of the court 'till we can better satisfy ourselves both as to the remedy and

the right.

CUSHING, JUSTICE.

The Judicial act expressly declares that "suits in equity shall not be sustained in either of the courts of the United States in any case where plain, adequate, and complete remedy may be had at law." Now if Georgia has any right to the debt in question, it is a right at law, for which, of course, the law will furnish a plain, adequate, and complete remedy. The decision of the circuit court in a case to which Georgia was neither party nor privy did not and could not take away either the right or the remedy of the state. Nor can Spalding, the defendant below, be made liable twice for the same debt without his willful laches. For it is in his power to bring a writ of error, and then the whole merits of the claim of Georgia appearing on the record, we must decide it as a question of law, either by affirming or reversing the judgment, so as to bind us in any suit, which Georgia might institute for the same cause.

Besides, the State of Georgia (notwithstanding the judgment of the circuit court) may bring an action of *indebitatus assumpsit* against Brailsford (who is a man of fortune), after they have received the money, upon the principle of *Moses v. McFarland*, and with stronger reason; as in that case the parties, in both courts, were the same; but in the case proposed they would be different, and one of them has never been heard. In some form, therefore, Georgia may obtain complete redress at law.

I do not, upon the whole, consider the refusal of Spalding to bring a writ of error (which he is not compellable to bring) nor any other suggestion in the bill, as a sufficient foundation for exercising the equitable jurisdiction of the court, and consequently I think that an injunction ought not to be awarded.

MR. CHIEF JUSTICE JAY.

My first ideas were unfavorable to the motion, but many reasons have been urged which operate forcibly to produce a change of opinion.

The great question turns on the property of a certain bond -- whether it belongs to Brailsford, or to Georgia? It is put in suit by Brailsford, but if Georgia, by virtue of the confiscation act, is really entitled to the debt, she is entitled to the money, though the evidence of the debt happened to be in the possession of Brailsford and though Brailsford has by that means obtained a judgment for the amount.

Then the only point to be considered is whether, under these circumstances, it is not equitable to stay the money in the

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hands of the marshal, 'till the right to it is fairly decided, and so avoid the risk of putting the true owner to a suit for the purpose of recovering it back?

For my part, I think that the money should remain in the custody of the law 'till the law has adjudged to whom it belongs, and therefore I am content, that the injunction issue.

Injunction granted.