Emory Vs. Grenough

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Appeal No. : 3 U.S. 369

Appellant : Emory

Respondent : Grenough

Judgement :

EMORY v. GRENOUGH - 3 U.S. 369 (1797)
U.S. Supreme Court EMORY v. GRENOUGH, 3 U.S. 369 (1797)

3 U.S. 369 (Dall.)

Emory
v.
Grenough

August Term, 1797

Error from the Circuit Court for the District of Massachusetts.

The Plaintiff in error was a native of Massachusetts, formerly resident in Boston, where he contracted the debt in question to the Defendant in error, who was, also a native, and had always continued a resident, of that state. Some years afterwards the Plaintiff in error removed into Pennsylvania, became a resident

citizen of the state, took the benefit of her bankrupt law (which, in its terms and operation, was analogous to the bankrupt laws of England) and duly obtained a certificate of conformity from the commissioners. Subsequent to this discharge, he returned, on a transient visit, to Boston; and, being there arrested by the Defendant in error, for the old debt, he caused the suit to be removed from the State into the Circuit Court, and pleaded his certificate in bar to the action: but the court (consisting of Judge Iredell, and the District Judge) over-ruled the plea, and gave judgement for the Plaintiff below: whereupon the present writ of error was brought. *

The argument of the cause had been considerably advanced, when a contagious fever made its appearance again in Philadelphia, and the business of the court was unavoidably suspended. But at February Term, 1797, the court having decided,

Page 3 U.S. 369, 370

in the case of Bingham versus Cabot, et al. that in order to sustain the jurisdiction of the Federal Court, it must be set forth in the process, that the parties are citizens of different states; and that form having been omitted in the present suit, this and several other writs of error were struck off the docket. Ingersoll and Dallas, for the Plaintiff in error. Lewis and E. Tilghman, for the Defendant in error.*

Page 3 U.S. 369, 371

all nations, of controuling all those by their laws, who live among them, exemplifed, as Grotius mentions, 2. c. u. n. 5. in the instance of personal arrest practiced everywhere.

Whoever makes a contract in any particular place, is subjected to the laws of the place as a temporary citizen.

Nor indeed are they supported or justified by any reason, in compelling foreigners to abide by the decisions of the law where they happened to be, except on the general principle that the jurisdiction of a government is considered as competent

to the controul of all those, who are within its limits.

From these considerations the following position arises. All business and transactions in court, and out of court, whether testamentary or other conveyances, or acts, which are regularly done according the law, of any particular place, are valid even where a different law prevails, and where, had they been so transacted, they would not have been valid. On the contrary, transactions and acts which are executed, contrary to the laws of a country, as they are void at first, never can be good and valid, and this applies, not only with respect to those who have their residence in the place of the contract; but those, who were there only occasionally; under this exception only, that if the rulers of another people would be affected by any peculiar inconvenience of an important nature, by giving this effect to transactions performed in another country, according to the laws of the place they are in, such particular place is not bound to give effect to those proceedings, or to consider them as valid within their jurisdiction. It is worth while to exemplify the principle by examples and instances.

In Holland a last will and testament may be made before a notary, and two witnesses: In Friezeland it is of no effect unless established and witnessed by seven witnesses.

A Batavian makes a will in Holland according to the law of the place, under which the goods, situated and found in Friezeland are demanded; ought the Judges of Friezeland to grant the demand founded upon the will made in Holland? The laws of Holland cannot bind the people of Friezeland, therefore to decide according to the first maxim, the will would not be good in Friezeland; but by the third maxim its validity is supported, and by that judgment is given in its favour. But a Frizian

makes a journey into Holland, and there executes a will according to the law of the place, contrary to the law of Friezeland, and returns and dies there: Is the will good? It is good according to the second maxim; because while he was in Holland, though but for a temporary purpose, he was bound by the law of the place, and an

act good, where done, ought to prevail every where, according to the third maxim, and that, without any distinction between moveable and immoveable estate, and so the law is practiced. On the other hand, the Frizian makes his will in his own country, before a notary, with two witnesses, it is carried into Holland, and demand made of the goods found there: It will not be granted, because not made in a valid manner at first, being made contrary to the laws of the place. It would be the same thing if the Batavian, was to make such a will in Friezeland, although in Holland it would have been good; for it is true, that such a deed would not be good in its commencement, for the reasons just stated.

What we have said with respect to wills applies equally to conveyances to take effect during the life of the grantor: Provided a contract is made according to the law of the place, in which it is entered into, throughout, in court, and out of court, even in those places where such a mode of contracting is not allowed, it will be supported. For example: In a certain place particular kinds of merchandize are prohibited, if sold there the contract is void, but if the same merchandize were sold elsewhere, in a place, where there was not any prohibition, and a suit is brought in a place where they were prohibited, the purchaser will be condemned and the suit maintained, because the contract was good in its origin, where made. But if the merchandize sold in another place, where they were prohibited, were delivered, the purchaser would not be condemned, because it would be contrary to the law and convenience of the government where they were sold, and an action would not be countenanced wherever instituted, even to compel the delivery; for, if on the delivery being made the purchaser would not pay the price, he would be bound, if at all, not by the contract, but that having got the goods of another, it would be unreasonable that he should enrich himself at the expense and loss of another.

The rule is equally applicable to adjudged cases. A sentence pronounced in any place, or a pardon granted by those who had jurisdiction, has equal effect every where. Nor is it lawful for the magistrates of another commonwealth, to prosecute, or suffer to be prosecuted, a second time, one who has been absolved or pardoned, although without a sufficient reason. Still however under this exception, that no evident danger or inconvenience result from it to the other commonwealth,

as an instance within our own memory may exemplify. Titius having struck a man on the head, on the borders (within the limits) of Friezeland, who the following night discharged a great deal of blood at the nose, and, after having supped and drank heartily, died. Titius escaped into Transylvania. Being apprehended there as it appears voluntarily, he was tried and acquitted, upon the suggestion that the man did not die of the wound. This sentence was sent into Friezeland, and he applied for a discharge from the prosecution as having been acquitted. Although the manner of trial was not very exceptionable, yet the court of Friezeland was much disgusted at the idea of executing the delinquent, and giving effect to the foreign proceedings, although demanded by the Transylvanians; because the flight into the neighbouring government, and the pretended process appeared too evidently calculated to elude the jurisdiction of Friezeland; which is the exception under the third maxim.

Page 3 U.S. 369, 373

The same principle is observed in judgments respecting civil matters as is evident from the following example within our memory. A citizen of Harlem made a contract with one in Groningen and submitted himself to the judges of Groningen. Being cited by virtue of this submission, and not appearing he was condemned, as contemacious. Execution of the sentence being demanded, it was doubted whether it ought to be granted in a Frizian court. The reason of doubting was, that by force of the submission, if he was not found in the foreign territory, they could not proceed against him as contemacious, as we shall see elsewhere; nor without prejudice to our jurisdiction and also of our citizens, could effect be given to such sentences. However it was allowed at that time, certain magistrates concurring, that it should not be permitted to the Frizians to examine by what principle the sentence passed at Groningen could be justified, but only whether it was valid according to the law of the place. Others were governed by the following reason, that the magistrate at Harlem on request had granted a citation which he ought rather not to have done, and the Amsterdam magistrate denies the execution of the sentence passed against the absent, being cited to the court of Friezeland by an edict founded on the terms of the submission and condemned without being

heard, and that such proceedings ought not to affect any one. With this opinion I concur, on account of the restriction contained in the third axiom.

Again: it has been made a question, whether if a contract is entered into at any supposed place, abroad, and an action is commenced with us, and the rule was different here, and there, either in allowing or denying the action, which law is to govern? For instance. A Frizian becomes a debtor in Holland on account of merchandize sold there, and is sued in Friezeland after the expiration of two years; the act of limitation is pleaded which bars such actions with us after a lapse of two years; the creditor replies that in Holland, where the contract was made, such prescription and limitation do not exist; and therefore is not to be urged against him in this case. But is was otherwise decided once between justice Bleckenfeldt against G. Y. and again between John Jenollin against N. B. both before the great holidays in 1680. For the same reason, if a debtor resident in Friezeland executed an instrument in Holland before a magistrate which may there entitle him to an execution, but not by common right, no execution can issue here, but the merits of the original demand must be examined. The reason is, that acts of limitation, and modes of execution, do not belong to the essence of the contract, but to the time and manner of bringing suits, which is a distinct thing, and therefore, it is established upon the best ground, that in entering a judgment, the law of the place where it is rendered, is to govern, although, it respects a contract made elsewhere, Sandius B. 1. Tit. 12. Def. 5. Where he says that in the execution of a sentence given abroad, the law of the place, in which the execution is asked, is to govern, not the law of the place, where the judgment was given.

The contract of matrimony is also regulated by the same rules. If it is regular and valid in that place where it was contracted and celebrated, it is binding every where, under the same exception of not doing prejudice to others, to which exception may be added, if incest should be permitted any where, or marriage in the second degree, which indeed is fearcely supposable.

In Friezeland matrimony is, when a man and woman agree to marry and voluntarily take each other for man and wife, although no ceremony is performed at church.

In Holland, matrimony cannot be contracted in that manner. The Frizians, however, without doubt, enjoy among the Hollanders the rights of married people, in the particulars of dower, jointure, the rights of children to inherit the property of their parents, etc.

In like manner if a Brabanter, who should marry under a dispensation from the Pope within the prohibited degrees, should remove here, the marriage would be considered as valid: yet if a Frizian marries the daughter of his brother in Brabant, and celebrates the nuptials there, returning here he would not be acknowledged as a married man, because, in this way our law might be eluded by bad examples, and this induces me to make an observation upon this point. It often happens, that young people desirous of forming improper connexions, and to sanction their illicit intercourse with the ceremony of marriage, go into East Friezeland, or other places, in which the consent of curators or guardians is not necessary to marriage, according to the Roman laws. There they celebrate marriage and presently return to their country. I think, that this is a manifest fraud or evasion of our law, and therefore that the magistrates here, are not obliged by the law of nations to acknowledge such marriages or to hold them as valid; especially with respect to those, who transgress and evade their own laws knowingly and intentionally. Moreover, not only, the contract of marriage itself, properly and regularly celebrated in one place, is good in all places, but the rights and incidents which attend it where celebrated, attend it elsewhere. In Holland married people have a communion of all their goods, unless it be otherwise expressly convenanted by them; this will be the effect, as to goods situated in Friezeland, although there marriage only occasions a common risque of profit and loss, not of the goods themselves; therefore the Frizians remain after the marriage each one, both husband and wife, separate owners of their goods situated in Holland. When however the married couple remove from the one state or province to the other, whatever is afterwards acquired or falls to either, is not in common, but held by distinct right, and what was before made common between them, will be either in common or otherwise as they direct: as Sandius lays it down who tells us, B. 2. de

is tit. 5. def. 10. there was a dispute among the learned doctors whether immoveable goods, situated in another country, were to be affected and regulated by the rules as we have laid it down.

The reason of the doubt was, that the laws of one commonwealth, cannot affect the integral parts, the territory of another commonwealth; to this two answers may be given. First, That it cannot be done by the immediate force and operation of a foreign law, but with the concurring consent of the supreme power of the other government, which gives an effect to foreign laws exercised upon property within its own jurisdiction, without any prejudice being received to its sovereignty or the rights of its citizens, regarding the mutual convenience of the two nations or governments, which is the foundation of all these rules. The other answer is, that it is not so much by force of law, as by the consent of the parties reciprocally communicating their rights to each other, by which means a change, or modification of property may arise, not less from matrimony than any other contract.

The place, however, where the contract is entered into, is not to be exclusively considered: if the parties had in contemplation another place at the time of the contract, the laws of the latter, will be preferred in the construction of the contract.

Every one is considered as having contracted in that place, in which he bound himself to pay or perform anything b. 21. de. O. & A. and the place where matrimony is contracted is not so much the place where

the ceremony is performed, as where they expect and intend to live and settle. It happens daily, that men in Friezeland, natives or sojourners, marry wives in Holland, which they immediately bring into Friezeland. And if at the time of the marriage, they intended immediately to settle in Friezeland, there will not in such case be a community of goods. Although they make no special marriage contract, not the law of Holland, but of Friezeland, will govern: the latter, not the former, is the place of their contract.

There is a further application of the restriction so often mentioned. The effects of a contract entered into at any place, will be allowed according to the law of that place, in other countries, if no inconvenience results therefrom to the citizens of that other country, with respect to the law which they demand, and the sovereignty of the latter place, is not bound, nor indeed can it so far extend the law of another territory. For example, the oldest and first hypothecation (mortgage) of a moveable, is to be preferred even against a third possessor, by the law of Ceasar, and in Friezeland, not among the Batavians; therefore if any one upon such an Hypothecation proceeds to demand the article from a third person, he shall not be heard, but his suit rejected; because the right of the third person to that chattel, shall not be taken away, by the law of another jurisdiction or territory. Let us enlarge this rule to the following extent:

If the law of the place in another government is contrary to the law of our state, in which also a contract is made, inconsistent with a contract celebrated and made in another place, it is reasonable in such case, that we should observe our own law, rather than a foreign law. For example:

In Holland, matrimony is contracted with this agreement, that the wife shall not be responsible for the debts contracted by the husband only; although this is a private contract, it is said to be valid in Holland, to the prejudice of the creditors, with whom the husband shall afterwards contract debts, but in Friezeland such a kind of contract would not be binding unless published, nor would ignorance of the necessity of making it public, be an excuse according to the law of Ceasar and equity. The husband contracts debts in Friezeland, and the wife is sued as jointly responsible, and liable for one half of the debt: She pleads her marriage contract, the creditors reply that this contract is contrary to the laws of Friezeland, because not published, and this is the rule with us, where the marriage was contracted here; as I lately gave my opinion when consulted upon the point. But those who contracted, in Holland, and in whose favour the debts were contracted there, were non-suited, notwithstanding their suit was brought in Friezeland, because, as far as respected them, the law of the place, where the marriage was contracted, not the laws of the two countries, came into consideration.

From the rules laid down in the beginning, the following axiom may be deduced. Personal rights or disabilities obtained, or communicated, by the laws of any particular place, are of a nature which accompany, the person wherever he goes, with this effect, that in all places, he either enjoys the immunities or exemptions, or is subject to the disabilities imposed by the law of the country where, they at any time happen to be, on characters of that description.

Therefore, those who with us are under tutors or curators as young men, prodigals, married women, are every where reputed, as persons subject to curators, and whatever the law of any place considers as the right or disabilities of persons of that description, they may suffer exercise and enjoy; hence, he who is excused the consequences of crimes, or

Page 3 U.S. 369, 376

contracts on account of his want of age, in Friezeland, cannot make binding contracts in Holland, and one declared, prodigal here, contracting elsewhere, will not be bound. Again, in some provinces, one above the age of twenty-one years, may convey his real estate; such a person may do the same in those places where twenty-five is the period of full age; because whatever the laws and judicial proceedings in any place, decide as to their subjects, other people allow to have the same effect with them, unless a prejudice or inconvenience, would result to them, or their laws.

There are persons who understand these personal rights to the following extent, that whoever, in a certain place, is of full age, or a minor, a child, or put out of the controul of the father, will enjoy the same rights, and be subject to the same disabilities, as in the place where he became such a character, or was so reputed; and whether the same thing would, or would not, have happened in his own country, still that the same consequence necessarily follows. It appears to me, that this is laying down the rule too broad, and would subject us to a burdensome inconvenience by the laws of our neighbours. An example will make the thing plain: A child not emancipated or exempted from the power of his Father, and who has nor ceased to be one of his family, cannot make a will in Friezland. He goes

into Holland, and there makes a will-is it valid? I think it valid in Holland, by the first and second rules, that the laws regulate as to all those within its limits, nor is it reasonable, that the people there, respecting a business done there, neglecting their own laws, should judge according to the laws of other people, but that will would not be valid in Friezeland, by the third rule, because by that means, nothing would be more easy than to elude our laws, and our citizens might elude them every day. But in other places out of Friezeland, the will would be valid even where by their laws a child while one of the Father's family could not make a will, because there the reason would not apply, that their citizen had gone to Holland to elude their law in fraudem legis.

The example I have given respects an act prohibited at home on account of a personal disability. We will give another act allowed at home, but prohibited abroad, where done; some time since decided in our Supreme Court- Rudolph Monsema aged 17 years and 14 days, was born, and lived at Groningen, after that he went abroad to learn the business of a Druggist, he made a will, which he might have made in Friezeland, but at Groningen, says D. Nauta the Reporter, it is not lawful for an infant to make a will under 20, or in the time of his last illness, or for more than half his patrimony. The young man died of that sickness leaving his Father his heir, and leaving nothing to his Mother's relations, who contended that the will was void as made against the law of the place. The heirs insisted that a personal quality accompanies the person every where, and, as he could have made this will at home, he could make it abroad. But it was decided against the will, although there was no intention to avoid the law, but the judgment was not universally approved Nauta himself dissenting. M S. 134. An. 1643. d. 27. Oct.

The foundation of all this doctrine we have said, and we insist upon it, is the subjection that men owe to the laws of every country within which they are at any time; from whence it follows, that an act valid or void, in its beginning, and where it first takes place, must be the same elsewhere.

But this observation does not apply equally to immoveable property, since it is considered not as depending altogether upon the disposition of every master or owner of a family-but the Commonwealth

affixes certain rights as resulting from real property, and is interested in its disposal; nor could a nation without a great inconvenience suffer its real property to be conveyed with these incident rights, by the laws of another country, and contrary to its own laws- therefore a Frisian having fields and houses in the province of Groningen, cannot make a will disposing of them, because it is prohibited there to make a will of real estate; the Frisian law not affecting lands which constitute integral parts of a foreign territory.

But this does not contradict the rule, that we have before laid down, that if a will is made accordingly to the ceremonies of the place, where the Testator resides, it will be good with respect to his property in another country, if a will could be made there, because the diversity of laws in that respect, does not affect the soil, but directs the manner of making the will, which, being rightly done, may pass real estate in another country, so far as may not interfere with any incidents, connected with the ownership of real property in the country where it is situated. This rule takes place in common conveyances-things annexed to the freehold in Friezeland, sold in Holland, in a manner prohibited in Friezeland, but allowed in Holland, are well sold, corn growing in Friezeland is sold in Holland according to the Lasts, as it is called, the sales are void, because it is prohibited in Freizeland, whether prohibited in Holland or not, because it is annexed to the freehold, and is a part of it.

The same rule held with regard to the succession to an interstate estate. If the deceased was Father of a family, whose property was in different provinces, as far as respects the real estate, it would descend according to the laws of the place where situated; but with respect to the personal property, it would go according to the law of the place where the intestate lived, and of which he was an inhabitant, for which see Sandium lib. 4. Decis. Tit. 8. Def. 7.

These observations are of a nature that require more full explanation, seeing there are not wanting writers, who think otherwise in some particulars, whom you will see respectfully spoken of by Sandium in his reports of causes; to which add

Rodenbergius treatise of laws, in the title of the Marriage Contract. Footnotes

[Footnote *] It appeared, during the discussion, that a great diversity, existed in the law and practice of the several States, upon this subject; and that a decision, directly contrary to that of the Circuit Court of Massachusetts, had been given in the Circuit Court of Rhode Island, composed of Judge Wilson and the District Judge.

[Footnote *] The following extract from Huberus was translated for, and read in, this cause; and, I am presuaded, that its insertion here will be approved by the prosession. HUBERUS, 2 Vol. B. 1. Tit. 3 ps 26. 'It often happens that contracts entered into in one place, take effect in different governments, or are judicially decided upon in other places, than those in which they were entered into. It is also well known, that when the Romen Empire was destroyed, the Christian world was divided into many nations, not united under any common head, nor connected by any uniformity of regulations. It is not wonderful that we do not find any thing upon this subject in the Roman law; when the government of the Roman people, was extended over a great part of the habitable globe, the frequent conflict and contrarity of laws could not occur; the rule was one and the same. However the fundamental rules by which this question ought to be decided, appear to be derived from the Roman law, although the inquiry itself appears to belong rather to the law of nations, than to the civil law; as what different nations observe between themselves, it is obvious forms the law of nations. In order to render this very intricate business plain and clear, we will lay down three maxims, which, being fully established, as it appears to us they may easily be, the deduction of the consequences, necessary to an entire understanding of the subject, will be of no great difficulty. They are these: 1st. The laws of every empire have force within the limits of that government, and are obligatory upon all who are within its bounds. 2nd. All persons within the limits of a government are considered as subjects, whether their residence is permanent or temporary. 3rd. By the courtesy of nations, whatever laws are carried into execution, within the limits of any government, are considered as having the same effect every where, so far as they do not occasion a prejudice to the rights of the other governments, or their

citizens. It appears, therefore, upon this occasion, that we ought to consult, not the civil law only, but what is to be inferred from the mutual convenience, and the tacit consent of different people, because as the laws of one people cannot have any force or effect directly with another people, so, on the other hand, nothing would be more inconvenient in the promisciuous intercourse and practice of mankind, than that what was valid by the laws of one place, should be rendered of no effect elsewhere, by a diversity of law, which is the reason of the third maxim, of which heretofore no doubt appears to have been entertained. With respect to the second maxim, some have thought otherwise, who deny that foreigners are subject to the law of the place. I acknowledge there are exceptions to the rule, which I will notice hereafter; but this position we hold as most certain, that whoever live within the bounds of a government, are to be accounted its subjects. This is evident from considering the nature of a republic, and the universal custom among