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Tucker Vs. Oxley

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Court : US Supreme Court

Decided On : 1809

Appeal No. : 9 U.S. 34

Appellant : Tucker

Respondent : Oxley

Judgement :

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Tucker v. Oxley

9 U.S. (5 Cranch) 34

ERROR TO THE CIRCUIT COURT OF THE

DISTRICT OF COLUMBIA AT ALEXANDRIA

SYLLABUS

Under the bankrupt law of the United States, a joint debt may be set off against the separate claim of the assignee of one of the partners. But such offset could not have been made at law, independent of the bankrupt law.

A joint debt may be proved under a separate commission, and a full dividend received. It is equity alone which can restrain the joint creditor from receiving his full dividend until the joint effects are exhausted.

Error to the Circuit Court of the District of Columbia, sitting at Alexandria, in an action of assumpsit for goods sold and delivered, brought by Oxley,

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assignee of Thomas Moore a bankrupt, against the plaintiffs in error. Upon the general issue, the jury found a verdict for the plaintiff below for $143.33, subject to the opinion of the court upon the following case:

Thomas Moore, the bankrupt, carried on the trade and business of a vendue master in co-partnership with one Henry Moore which co-partnership was on 31 March, 1802, dissolved on the terms that Thomas Moore should collect the balances due to and pay the debts due from the joint concern as far as the joint property would extend. Thomas Moore carried on the trade and business of a vendue master on his separate account from that time until 2 September following, when he became bankrupt, and a commission being duly awarded and issued against him, he was duly declared a bankrupt according to the laws of the United States then in force concerning bankrupts, under which the plaintiff was duly appointed assignee.

While Henry & Thomas Moore carried on the business of vendue master in partnership, they became jointly indebted to the defendants, John and James Tucker, in the sum of $106.49, being the balance of account due to the defendants, for their goods sold by H. & T. Moore at vendue. After the dissolution of the partnership and while Thomas Moore carried on business on his separate account, the defendants, the Tuckers, at different times from 19 April to 22 July, 1802, knowing that the partnership was dissolved and that Thomas Moore carried on business on his separate account, purchased of him at vendue, goods to the amount of $113.12, which goods were charged to the defendants, the Tuckers, in the separate books of Thomas Moore without credit being given to the defendants

for the joint debt due to them from Henry & Thomas Moore. Thomas Moore being examined as a witness, proved that he intended, at the time of selling the goods to the defendants, to give them credit for the joint debt due to them from Henry

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& Thomas Moore but nothing was said or agreed on the subject between him and the defendants, nor was any such credit ever given before his bankruptcy. This action is brought for the price of the goods so sold and delivered by Thomas Moore in his separate capacity. If the court should be of opinion, upon the case stated, that the defendants are entitled to have the joint debt due to them by Henry & Thomas Moore deducted from the sum claimed in this action, the verdict was to be reduced to $16.63, and judgments to be entered accordingly

The opinion of the court below being, that the joint debt could not be set off against the separate claim of the bankrupt, judgment was rendered for the plaintiff for the larger sum, whereupon the defendants brought a writ of error.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court as follows:

In this case, the plaintiffs in error, who were defendants in the circuit court, claimed to setoff against a debt due from them to Thomas Moore the bankrupt a debt previously due to them from the firm of H. & T. Moore, which firm was dissolved, and the partnership fund had passed to T. Moore. This offset was not allowed, and its rejection is the error alleged in the proceedings of the circuit court.

At law, independent of the statute of bankruptcy, the Court is of opinion that this discount could not have been made in a suit instituted by Thomas Moore against the Tuckers, and if the words of the act of Congress allowing setoff in the case of mutual debts and credits were to be expounded without regard to the provisions of that act in other respects, it is probable that they would not be extended beyond that technical operation, to which has been

allowed the term "mutual debts," in ordinary cases. But the bankrupt law changes essentially the relative situation of the parties, and the provisions making that change are thought by a majority of the Court to have a material influence on the words of the 42d section of the act, which provide for the case of mutual debts and credits.

It is the opinion of the Court that this is a debt which might have been proved under the 6th section of the act. It is a debt which, by a suit against both the partners, might have been recovered against either of them, and either might have been compelled to pay the whole. Although due from the company, yet it is also due from each member of the company, and the claim of the creditor for its satisfaction extended, previous to the act of bankruptcy, to the whole property of each member of the firm as well as to the joint property of the firm. It would be certainly impairing that claim to apply, by the operation of law, the whole particular fund to other creditors who, at the time of the bankruptcy, had not a better legal claim on that fund than the Tuckers, without allowing them to participate in it. The Court therefore would be much inclined to a consider the creditors of the partnership as having a right, under the general description of creditors of the bankrupt, to prove their debts before the commissioners. But all doubt on this subject seems to be removed by the proviso to the 34th section. That section declares that the bankrupt shall be discharged from the debts which were due from him at the date of the bankruptcy, and all which were or might have been proved under the said commission,

"Provided that no such discharge of a bankrupt shall release or discharge any person who was a partner with such bankrupt at the time he or she became bankrupt or who was then jointly held or bound with such bankrupt for the same debt or debts from which such bankrupt was discharged as aforesaid."

Thomas Moore then, is discharged from the debt due from Henry & Thomas Moore to the Tuckers, and if he is discharged therefrom, it would seem to

be an infraction of their preexisting rights not to allow them a share of his property. It is deemed by the Court material in the construction of this statute that, as the proviso shows the joint creditors to be within the description of the terms creditors of the bankrupt so as to enable them to prove their debts under the commission, they are of necessity comprehended within the same terms in those sections which direct to whom the dividends are to be made. The words of the 29th and 30th sections are imperative. They command the commissioners to divide the estate of the bankrupt among such of his creditors as shall have made due proof of their debts, in proportion to the amount of their claims. Consequently every creditor who proves his debt is entitled to a dividend.

But although the creditors of H. & T. Moore might have proved their debt before the commissioners and have received a dividend out of the estate of the bankrupt, it may be contended that, having failed to do so, they are not entitled to set off their whole claim.

The 42d section of the act directs that where it shall appear to the commissioners that there hath been mutual credit given by the bankrupt and any other person or mutual debts between them at any time before such person became bankrupt, the assignee or assignees of the estate shall state the account between them, and one debt may be set off against the other, and what shall appear to be due on either side on the balance of such account after such setoff, and no more, shall be claimed or paid on either side respectively.

The term "debt," as used in this section, is fairly to be construed to mean any debt for which the act provides. A debt which may be proved before the commissioners and to the owner of which a dividend must be paid is a debt in the sense of the term as used in this section.

Were this doubtful, it cannot be denied that the advantage given by the section is reciprocal, and in any case where the setoff would be allowed if the balance was against the bankrupt, it must be allowed if in his favor. It has already been stated that the Tuckers might have proved their claim before the commissioners. Can it be doubted that the whole of the debt due to the bankrupt would, under this section, have been deducted from that claim? We think it cannot be doubted. Then, the terms applying alike to each party, the debt due to the Tuckers must be set off from that which they owe the bankrupt.

If the "assignee of the estate ought to have stated the account," and have only claimed the balance, his omitting so to do cannot enlarge his rights; he can only recover what he ought to have claimed.

This, which seems to be the naked law of the case, is not unreasonable. It is fair to conclude that the Tuckers forbore to recover the money due to them from H. & T. Moore in consideration of their dealings with T. Moore after he traded on his separate account.

This exposition of the bankrupt act appears to the Court to conform to that which is given in England. As the bankrupt law of the United States, so far as respects this case, is almost, if not completely, copied from that of England, the decisions which have been made on that law by the English judges may be considered as having been adopted with the text they expounded.

In England it has never been doubted that a man having a claim on two persons might become a petitioning creditor for the bankruptcy of one of them. Such petitioning creditor has always been admitted to prove his debt before the commissioners and to receive his dividends in proportion with the other creditors. He is, then, in contemplation of the act, a creditor of the bankrupt, and consequently all the

provisions of the act apply to him, as to other creditors. This would seem to prove that under the legal operation of the act, a creditor of a firm, of which the bankrupt

was one, and a creditor of the bankrupt singly, were equally creditors of the bankrupt in contemplation of the law, and were construed to come equally within the meaning of the term as used in the act. If this position be correct, the rules which we find laid down by the chancellor for marshaling the respective funds are to be considered merely as equitable restraints on the legal rights of parties, obliging them to exercise those rights in such manner as not to do injustice to others. This is the peculiar province of a court of chancery. It is the same, in principle, with the common case of marshaling assets, where specialty creditors, who have a right to satisfaction out of lands, exhaust the personal estate, to the injury of simple contract creditors.

It is undoubtedly unjust that the Tuckers, having a claim on H. & T. Moore and being able to obtain payment from H. Moore should satisfy that claim entirely out of the separate estate of T. Moore to the exclusion of other creditors, who had no resort to Henry, and it is probable that a court of chancery might restrain this use of his legal rights within equitable limits. But suppose H. Moore also to be a bankrupt, or to be insolvent and unable to pay the debt; would it not be equally unjust to apply the estate of each individual to the discharge of the several debts, to the entire exclusion of their joint creditors, who, previous to their bankruptcy, had a legal and equitable right to satisfaction out of the separate estate of each?

Mr. Cooke has made a very good collection of the decisions in England on this question. It will be found that a creditor of the partnership was first permitted by consent to prove his debt before the commissioners of the individual bankrupt, and to receive dividends from the separate fund. It was afterwards decided by the chancellor that he had a right

so to do, and in conformity with this decision was the regular course of the court until the year 1796. During this time, however, the chancellor, sitting, as chancellor, on a bill suggesting equitable considerations for restraining the order he had made, was accustomed to enjoin the dividends which he had ordered, sitting in bankruptcy. This would seem to prove that at law the creditor of the

partnership had a right to his dividends from the separate fund, but that equity would compel him first to exhaust the joint fund.

In 1796, this whole subject was reviewed in the case *Ex Parte Elton,* reported in 3 Ves.Jr. This case has been considered as overruling former decisions, but in the opinion of the Court it confirms the principle already stated. After stating his objection to the prevailing practice, because each order carried in its bosom a suit in chancery, the chancellor took time to consider the subject, and finally determined that the petitioner should be permitted to prove his debt and that his dividend should be set apart, but not paid to him until an account should be taken of the joint fund.

It is perfectly clear that in this case the chancellor, for convenience, exercised at the same time his common law and equitable jurisdiction. In conformity with the uniform exposition of the act, he permitted the partnership creditor to prove his debt before the commissioners of the bankrupt, and directed the dividend to be allotted to him out of the separate fund, and then, without the expense of a bill, exercising his equitable powers, he suspended the payment of this dividend until it should be ascertained how much of it a court of equity would permit the creditor to receive. This does not negative, but affirms, the legal right of a partnership creditor to come on the separate fund.

It appears also to be admitted that if the particular creditors should be satisfied without exhausting the fund, the residue might be paid to the partnership

creditors. This seems to admit the legal right of those creditors to prove their debts and to receive their dividends. It is equity, not law, which can postpone them.

It is the opinion of a majority of the Court that the circuit court erred in rendering a judgment on this special verdict for the sum of $143.33 instead of the sum of $16.63, which was the balance after deducting the debt due from H. & T. Moore to the defendants in that court. It is therefore considered by the Court that the said judgment be reversed and annulled and that judgment be rendered for the

plaintiffs in the circuit court for the sum of $16.63 and the costs in the circuit court.

Judgment reversed.

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