

Wilson Vs. Koontz

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Court : US Supreme Court

Decided On : 1812

Appeal No. : 11 U.S. 202

Appellant : Wilson

Respondent : Koontz

Judgement :

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Wilson v. Koontz

11 U.S. (7 Cranch) 202

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF COLUMBIA

SYLLABUS

A defendant who removes from one county to another in Virginia is not thereby prevented from pleading the act of limitations unless the plaintiff has been, by such removal, actually defeated or obstructed in bringing or maintaining his action.

This was an appeal from the decree of the Circuit Court for the District of Columbia which dismissed the complainant's bill in equity.

Wilson filed a bill in equity in the nature of an attachment in chancery against Koontz, surviving partner of Koontz & Ober, as principal debtor, and Thomas Irvine and Joseph Mandeville as garnishees. It

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stated that Koontz, a resident of Virginia, as surviving partner of the firm of Koontz & Ober, was indebted to the plaintiff by note, in the sum of \$1,261, and had in the hands of Thomas Irvine and Joseph Mandeville goods and effects which were liable to be attached for the payment of the debt, and that unless he could make them liable by the intervention of the court below, he would be without any means of recovering his debt. In tender consideration whereof, and forasmuch as he had no remedy at law and could only subject the effects and money in the hands of Irvine & Mandeville to the payment of his debt by means of a court of equity, he prays a discovery and a decree that Koontz may pay the debt and that Irvine & Mandeville may be restrained from paying away the effects in their hands, and that they may be applied to the payment of the debt, and for general relief.

Koontz, having entered his appearance, gave security to perform the decree of the court if it should be against him, thereby discharging the attached effects, and pleaded the statute of limitations in bar of the suit, to which the complainant replied that on 4 August, 1794, a suit was brought by the orders of the complainant in the name of the president, directors, and company of the Bank of Alexandria as nominal plaintiffs in the district court in the Town or Winchester in the State of Virginia, upon the note in the bill mentioned, against Koontz & Ober, and upon the writ the sheriff returned that Koontz was not found and that Ober was no inhabitant of that county. That in September, 1794, it was agreed that Koontz should place in the hands of the complainant sundry bonds towards the discharge of the note, and that he would pay the balance in 12 or 18 months, in consequence of which the suit was dismissed, in pursuance of which arrangement part of the money was paid and the residue is still due with interest. That afterward, in the year 1794,

Koontz removed into some other part of the State of Virginia unknown to the complainant. That in 1803, the complainant having learnt the residence of the defendant in Rockingham County, 60 or 70 miles from his former residence and more remote from the complainant, ordered a suit against him, which was brought, but not prosecuted, because the defendant required

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security for costs from the complainant, who did not reside in Virginia.

To this replication there was a general rejoinder and issue and a general *dedimus* to take depositions. Upon the return of which, the cause came to hearing upon the pleadings and evidence. Whereupon the court below decreed that the bill should be dismissed with costs, from which decree the complainant appealed to this Court.

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MARSHALL, Ch. J. delivered the opinion of the Court to the following effect:

This is a suit in chancery, and the defendant pleads the act of limitations. The plaintiff by his replication attempts to bring the case within the exception contained in the 14th section of that act, but it seems essential under that section that the complainant should have been actually defeated or obstructed in bringing his action by the removal of the defendant. There is no evidence of his intention of bringing his action sooner than he did, or that he was delayed by the defendant's removal from the county. The Court is therefore of opinion that the circumstance of removal is not sufficient to take the case out of the statute.

It is objected that the plea of the statute of limitations is not good unless the defendant answer also, and deny the debt or aver it to be paid. But if this be a valid objection, it ought to have been taken at the time of offering the plea, and before the issue was joined. It is now too late.

If it be a good objection in cases within the general

jurisdiction of a court of equity, yet it is not valid in a case like the present, which is really a case at law as between the present parties.

The Court is of opinion that the plea is a good bar, and that the decree should be

Affirmed.