thelusson Vs. Smith

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Court : US Supreme Court

Decided On : 1817

Appeal No. : 15 U.S. 396

Appellant : thelusson

Respondent : Smith

Judgement :

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Thelusson v. Smith

15 U.S. (2 Wheat.) 396

ERROR TO THE CIRCUIT COURT FOR

THE DISTRICT OF PENNSYLVANIA

SYLLABUS

T. brought a suit against C. in the Circuit Court of Pennsylvania, which was referred to arbitrators; an award was made in favor of T., and a judgment *nisi* entered on 20 May 1805; exceptions were filed, overruled, and judgment finally

entered on 15 May 1806. On 22 May 1805, C. executed a conveyance of all his estate to trustees for the payment of his debts, at which time he was indebted to the United States on several duty bonds which became due at different periods subsequent to 22 May 1805. Suits were brought on the bonds as they severally became due, and judgments obtained and executions issued under which a landed estate belonging to C. was levied upon and sold. T. brought an action against S. (the marshal of the district), who levied the executions to recover so much of the funds in his hands as would be sufficient to satisfy T.'s judgment. In this suit the jury found a special verdict that C. was insolvent on 20 May 1805, but that it was not notoriously known, and the parties agreed that on 22 May 1805, he was unable to satisfy all his debts, and that this fact should be considered part of the special verdict.

Held that the word "insolvency," mentioned in the Duty Act of 1790, ch. 35, sec. 45, and repeated in the Act of 1797, ch. 74, sec. 5, and of 1799, ch. 128, sec. 65, means a legal insolvency, which, whenever it occurs, the right of preference arises to the United States, as well as in the other specified cases to which the acts of 1797 and 1799 have extended the cases of insolvency.

But if before the right of preference has accrued to the United States, the debtor has made a *bona fide* conveyance of his estate to a third person or has mortgaged it to secure a debt, or if his property has been seized under an execution, the property is divested out of the debtor, and cannot be made liable to the United States.

A judgment gives the judgment creditor a lien on the debtor's lands and a preference over all subsequent judgment creditors. But the law defeats the preference in favor of the United States in the cases specified in the Act of 1799, ch. 128, sec. 65.

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The plaintiffs in error instituted a suit in the Circuit Court for the District of Pennsylvania against William Crammond, which, by the agreement of the parties

and the order of the court, was referred to arbitrators. An award was made in favor of the plaintiffs, and a judgment *nisi* was entered on 20 May, 1805. Exceptions were filed and overruled, and a judgment was finally entered on 15 May, 1806. On 22 May, 1805, Crammond executed a conveyance of all his estate to trustees for the payment of his debts, at which time he was indebted to the United States on several duty bonds, which became due at different periods subsequent to 22 May, 1805. Suits were instituted on these bonds as they severally became due, and judgments were obtained and executions issued, under which a landed estate belonging to Crammond, called Sedgely, was levied upon and sold.

The plaintiffs, considering this property as being bound by their prior judgment of 20 May, 1805, and that they were entitled to be first satisfied out of the money in the hands of the defendant (the marshal of the court), which he had raised under the above executions, issued in the name of the United States, they brought this action to recover so much of those funds as would be sufficient to satisfy their judgment.

Upon the trial of the cause in the circuit court, the jury found that Crammond was insolvent on

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20 May, 1805, but that it was not notoriously known, subject to the opinion of the court upon a state of facts agreed between the parties whether the plaintiffs were entitled to recover. The parties further agreed in writing that on 22 May, 1805, Mr. Crammond was unable to satisfy all his debts, and that this fact should be considered as part of the special verdict. The other facts referred to by the jury are in substance, those which have been mentioned. The circuit court gave judgment against the plaintiffs below, and the cause was brought by writ of error to this Court.

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MR. JUSTICE WASHINGTON delivered the opinion of

the Court, and after stating the facts, proceeded as follows.

Two questions were made in the circuit court.

1. At what time a judgment *nisi* on an award of arbitrators, made under an order of court, binds the real estate of the defendant against whom the award is made -- whether on the day it is rendered or on the *quarto die post,* if no exceptions be filed, or on the day when the exceptions, if any are filed, are overruled.

2. If from the time when the judgment *nisi* is entered, then whether in this case the United States is entitled to be paid in preference to the judgment creditor?

The first question was not decided by the court below, and is not contested in this Court.

In considering the second question, it will be assumed for the sake of the argument that the judgment *nisi* binds the real estate of the debtor from the time it is rendered.

This question did not arise in the cases of *United States v. Fisher* or in that of *United States v. Hooe.* The point decided in those cases was that a mere state of insolvency or inability in a debtor to the United States to pay all his debts gives no right of preference to the United States unless it is accompanied by a voluntary assignment of all the property for the benefit of his creditors. There can be little doubt but that the word "insolvency," mentioned in the Act of 1790, ch.

35, sec. 45, and repeated in the Act of 1797, ch. 74, sec. 5, and of 1799, ch. 128. sec. 65, means a legal insolvency, which, whenever it occurs, the right of preference arises to the United States, as well as in the other specified cases to which the acts of 1797 and 1799 have extended the cases of insolvency.

In this case, the conveyance of Crammond on 22 May, 1805, was of all his property, at which time he was unable to pay all his debts; it is therefore a case precisely within the law and within the principle decided by the above cases.

But the question still remains to be decided whether this right of preference which accrued on 22 May can cut out a prior judgment creditor? The law declares

"That in all cases of insolvency, &c.;, the debts due to the United States shall be first satisfied, and if the assignees, &c.;, shall pay any debt due by the person or estate from whom or for which they are acting, previous to the debts due to the United States from such person or estate being first duly satisfied, they shall become answerable for the same in their own persons and estates."

These expressions are as general as any which could have been used, and exclude all debts due to individuals, whatever may be their dignity. The assignees are made personally responsible to the United States if in case of insolvency they pay any debt previous to those due to the United States. The law makes no exception in favor of prior judgment creditors, and no reason has been or we think can be shown to warrant this Court in making one.

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Exceptions there must necessarily be as to the funds out of which the United States is to be satisfied, but there can be none in relation to the debts due from a debtor of the United States to individuals. The United States is to be first satisfied, but then it must be out of the debtor's estate. If, therefore, before the right of preference has accrued to the United States, the debtor has made a *bona fide* conveyance of his estate to a third person or has mortgaged the same to secure a debt, or if his property has been seized under a *fi. fa.,* the property is divested out of the debtor, and cannot be made liable to the United States. A judgment gives to the judgment creditor a lien on the debtor's lands and a preference over all subsequent judgment creditors. But the act of Congress defeats this preference in favor of the United States in the cases specified in the 65th section of the act of 1799.

The judgment of the circuit court therefore is to be affirmed with costs.

Judgment affirmed.