

Harper Vs. Butler

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Court : US Supreme Court

Decided On : 1829

Appeal No. : 27 U.S. 239

Appellant : Harper

Respondent : Butler

Judgement :

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Harper v. Butler

27 U.S. (2 Pet.) 239

ERROR TO THE DISTRICT COURT OF THE

UNITED STATES FOR THE DISTRICT OF KENTUCKY

SYLLABUS

By the law of Mississippi, the assignee of a chose in action may institute a suit in his own name. When, therefore, an executor, having proved the will of his testator, in Kentucky, had assigned a promissory note due to the estate by a citizen of

Mississippi, the suit was well brought by the assignee without any probate of the will in that state.

The only question submitted to the court was whether the assignee of a chose in action, assigned by an executor in the state where he had proved the will and taken out letters testamentary, where the debt was contracted and where the testator lived and died, could maintain an action in another state without a new probate and new letters testamentary taken out in the state in which the action was brought.

The question arose on the demurrer of the defendant to the plaintiff's replication, setting out the probate, letters testamentary, assignment, &c.; The district court sustained the demurrer and decided against the plaintiff's right of action.

The causes of demurrer shown by the defendant in error were:

1. That the replication does not allege and set forth that the will of the testator was proved, and that letters testamentary were granted to the executor in the State of Mississippi.
2. That the replication does not show that the will of the testator was proved and probate thereof granted to the executor or any other person within the jurisdiction of the court, nor that it was granted by a tribunal of competent jurisdiction.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

This is an action of debt brought by the plaintiff in error in the Court of the United States for the District of Mississippi as the assignee of Henry Clay, executor of James Morrison deceased. The defendant pleaded in abatement that the will of James Morrison had not been proved or recorded in the State of Mississippi, nor had letters testamentary therein been granted to Henry Clay, the executor. To this plea there was a replication which set out the probate of the will in the State of Kentucky, the letters testamentary to the executor, and the assignment, in the

State of Kentucky, of the note on which the action was brought to the plaintiff in error. To this replication the defendant demurred. The court gave judgment for the defendant, and the plaintiff has sued out this writ of error.

The district court proceeded on the idea that the executor could not transfer a chose in action in Kentucky because the obligor did not reside in that state. This Court supposes the law to be otherwise. The assignment in Kentucky could not enable the assignee to sue in the courts of Mississippi unless the law of the court authorized an assignee to sue in his own name. But since this is permitted in the courts of Mississippi, the plea in abatement cannot be sustained.

The judgment is reversed and the causes remanded to the district court with directions to overrule the demurrer.

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