

Bank of Columbia Vs. Sweeney

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Court : US Supreme Court

Decided On : 1829

Appeal No. : 27 U.S. 671

Appellant : Bank of Columbia

Respondent : Sweeney

Judgement :

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27 U.S. (2 Pet.) 671

ERROR TO THE CIRCUIT COURT

FOR THE COUNTY OF WASHINGTON

SYLLABUS

The Act of the Legislature of Maryland of 1793 incorporating the Bank of Columbia, one of the sections of which gives to the bank a summary proceeding against debtors to the bank, did not intend to interfere with any legal defense

against the claim of the bank the party might have. It does not prescribe the nature of that defense or deprive him of any which might have been used had the action been commenced in the usual way.

This was a writ of error to the Circuit Court for the County of Washington. The same case was before this Court at January term, 1828, on a motion for a mandamus, [26 U. S.](#) 567.

Upon issue's being joined in the circuit court on the plea of the statute of limitations, that court decided that the defendant was entitled to avail himself of the statute against the claims of the plaintiffs, proceeding under the provisions of their charter, which gives them summary process against their debtors.

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

In 1793, the State of Maryland passed an act incorporating the Bank of Columbia, which contains the following section:

"And whereas it is absolutely necessary that debts due to the said bank should be punctually paid to enable the directors to calculate with certainty and precision on meeting the demands that may be made upon them, be it enacted that whenever any person or persons are indebted to the said bank for moneys borrowed by them or for bonds, bills or notes given or endorsed by them, with an express consent

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in writing that they may be made negotiable at the said bank, and shall refuse or neglect to make payment at the time the same becomes due, the president shall cause a demand in writing on the person of the said delinquent or delinquents, having consented as aforesaid, or if not to be found, have the same left at his last place of abode, and if the money so due shall not be paid within ten days after such demand made or notice left at his last place of abode as aforesaid, it shall and may be lawful for the, president, at his election, to write to the clerk of the general court, or of the county in which the said delinquent or delinquents may

reside or did at the time he or they contracted the debt reside, and send to the said clerk the bond, bill, or note due, with proof of the demand made as aforesaid, and order the said clerk to issue *capias ad satisfaciendum*, *fieri facias*, or attachment by way of execution, on which the debt and costs may be levied, by selling the property of the defendant for the sum or sums of money mentioned in the said bond, bill, or note, and the clerk of the general court and the clerks of the several county courts are hereby respectively required to issue such execution or executions, which shall be made returnable to the court whose clerk shall issue the same which shall first sit after the issuing thereof, and shall be as valid, and as effectual in law, to all intents and purposes, as if the same had issued on judgment regularly obtained in the ordinary course of proceeding in the said court, and such execution or executions shall not be liable to be stayed or delayed by any supersedeas, writ of error, appeal, or injunction from the chancellor, provided always that before any execution shall issue as aforesaid, the president of the bank shall make an oath (or affirmation if he shall be of such religious society as allowed by this state to make affirmation) ascertaining whether the whole or what part of the debt due to the bank on the said bond, bill or note, is due, which oath or affirmation shall be filed in the office of the clerk of the court from which the execution shall issue, and if the defendant shall dispute the whole or any part of the said debt, on the return of the execution, the court before whom it is returned shall and may order an issue to be joined, and trial

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to be had in the, same court, at which the return is made, and shall make such other proceedings that justice may be done in the speediest manner."

In pursuance of these provisions of the act, a *capias ad satisfaciendum* was issued by the bank against the defendant, on a promissory note signed by him and endorsed to the bank. The defendant appeared in court and claimed the right allowed by the act to *dispute* the debt, upon which the court ordered an issue to be made up between the parties. The plaintiff offered to file a declaration, tendering an issue on a wager, to which the defendant objected, and the court sustained the objection. A declaration in assumpsit was then filed, to which the

defendant pleaded the statute of limitations.

On the trial, the defendant moved the court to instruct the jury that if it should be satisfied by the evidence that three years had elapsed between the expiration of the time limited for the payment of the said note and the issuing of the execution by the clerk in this cause upon the letter and paper sent by the president of the bank and given in evidence, it ought to find a verdict for the defendant upon the issue joined on the plea of the statute of limitations.

The court gave the instruction required, and the jury found a verdict for the defendant. The counsel for the plaintiff excepted to the opinion, and has brought the cause into this Court by writ of error.

The execution being the first process under this extraordinary act, its emanation must be equivalent, so far as respects the bar created by the, act of limitations, to suing out original process in a suit commenced in the usual way. There is therefore no error in that part of the instruction which relates to the period to which time was to be calculated, and the only inquiry is whether the defendant could avail himself of the act of limitations.

The great object of the incorporating act appears to have been to give the bank the most expeditious remedy possible for the collection of the money due to it. The affidavit of the president supplies the place of a judgment and those proceedings after judgment which are allowed for the purposes

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of justice but may be used for mere delay are taken away. The execution "shall not be liable to be stayed or delayed by any supersedeas, writ of error, appeal, or injunction from the chancellor." But the law did not intend by this summary process to deprive the debtor of all defense. Although all delay was cut off, he was permitted, on the return of the execution, to dispute the whole or any part of the debt. But while the law allows him to dispute the debt, it still guards against delay. An issue is to be made up immediately and tried at the same term. While the law thus carefully guards against procrastination, it does not interfere with the defense

which the party is at liberty to set up. It does not prescribe the nature of that defense or deprive him of any which might have been used had the action been commenced in the ordinary way. Had the Bank of Columbia proceeded in the common course of law, the defendant could have pleaded the act of limitations in bar of the action. If we are correct in saying that the object of the section of the incorporating act which has been recited was expedition, not the ademption of legal defenses, we think this a mode of disputing the debt of which he might still avail himself.

There is no error in the judgment of the circuit court and it is

Affirmed with costs.

This cause came on to be heard on a transcript of the record from the Circuit Court of the United States for the District of Columbia holden in and for the County of Washington and was argued by counsel, on consideration whereof it is considered, ordered, and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed with costs.

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