Backhouse Vs. Patton

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Appellant : Backhouse

Respondent : Patton

Judgement :

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Backhouse v. Patton

30 U.S. (5 Pet.) 160

ON CERTIFICATE OF DIVISION OF OPINION IN THE CIRCUIT COURT

OF THE UNITED STATES FOR THE EASTERN DISTRICT OF VIRGINIA

SYLLABUS

In Virginia, the moneys arising from the sale of personal property are called legal assets in the hands of an executor or administrator, and those which arise from the sale of real property are denominated equitable assets. By the law, the

executor or administrator is required, out of the legal assets, to pay the creditors of the estate according to the dignity of their demands, but the equitable assets are applied equally to all the creditors in proportion to their claim.

Legal and equitable assets were in the hands of an administrator, he being also commissioner to sell the real estate of a deceased person, and by decree of the court of chancery he was directed to make payment of debts due by the intestate out of the funds in his hands, without directing in what manner the two funds should be applied. Payments were made under this decree to the creditors by the administrator and commissioner without his stating or in any way making known whether the same were made from the equitable or legal assets -- a balance remaining in his hands, unpaid to those entitled to the same, the sureties of the administrator, after his decease, claimed to have the whole of the payments made under the decree credited to the legal assets in order to obtain a discharge from their liability for the due administration of the legal assets. *Held* that their principal having omitted to designate the fund out of which the payments were made, they could not do so.

Where debts of different dignities are due to a creditor of the estate of an intestate, and no specific application of the payment made by an administrator is directed by, him, if the creditor applies the payment to either of his debts by some unequivocal act, his right to do so cannot be questioned. Query whether the application must be made by the creditor at the time, or within a reasonable time afterwards.

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There may be cases where, no indication having been given as to the application of the payment by the debtor or creditor, the law will make it. But it cannot be admitted that in such cases the payment will be uniformly applied to the extinguishment of a debt of the highest dignity. That there have been authorities which favor such an application, is true, but they have been controverted by other adjudications. Where an administrator has had a reasonable time to make his

election as to the appropriation of

payments made by him, it is too late to do so after a controversy has arisen. And it is not competent for the sureties of the administrator to exonerate themselves from responsibility by attempting to give a construction to his acts which seems not to have been given by himself.

This cause came before the Court on a certificate of a division of opinion in the Circuit Court of the United States for the Eastern District of Virginia. In that court a bill was filed on the equity side of the court for the recovery of debts by John Backhouse's administrator, and others.

The facts of the case, as agreed on the argument, were:

James Hunter died testate and insolvent, charging his estate, both real and personal, with the payment of debts. This suit was originally brought by Rebecca Backhouse, administratrix of John Backhouse deceased, one of the creditors, in the Circuit Court of the United States for the middle circuit of Virginia against said Hunter's executor, who dying during its pendency, Robert Patton, the defendant, was appointed administrator *de bonis non,* with the will annexed, and gave bond and security accordingly. The suit having abated by the death of the executor, was revived against Patton. In 1803 it was decreed that the real estate should be sold for the payment of debts, and Patton and others were appointed commissioners for that purpose, to hold the proceeds of such sale subject to the order of court.

In the management of the estate, divers sums of money came into the hands of Patton, both as commissioner and administrator. After various alterations of the parties by death and otherwise, and divers interlocutory decrees ordering payments to be made ratably to creditors, as their claims were ascertained by the court, a decree was made on 12 June, 1820, against Patton, as commissioner and administrator, whereby it was ordered and adjudged that he should pay a certain sum, to be ratably apportioned among certain creditors therein mentioned.

It was also ordered by said decree that a commissioner of court should examine and report upon the administration accounts of said defendant. This examination was had and a report made on 24 November, 1820. After the return of this report, to-wit on 15 June, 1821, it was decreed that the said defendant should pay a further sum, to be apportioned among the creditors as therein directed. Upon this decree executions were issued and returned " *nulla bona.* " Whereupon a supplemental bill was filed, seeking to make the sureties for the faithful administration of Patton accountable for his waste.

One of his said sureties failed to appear and answer, and the bill, as to him, was taken *pro confesso;* the other appeared and answered. When the cause came on for hearing against the sureties, the insolvency of Patton and the amount of assets which came to his hands to be administered on were not controverted. Patton having made satisfactory arrangements to secure the payment of the sum adjudged against him by the decree of 12 June, 1820, as to the present question, it was considered as paid. It was contended by the defendant that the whole sum adjudged to be paid by Patton, under the decree of 12 June, 1820, amounting to $23,322.56, should go to his credit as administrator.

At the hearing in the circuit court, the questions presented by the counsel of the parties, and argued before the court, were the following, to-wit:

"1. Whether the whole of the said payments made by the said Robert Patton, under the said decree of 12 June, 1820, was to be applied entirely to the debt due from him as commissioner of the court for the sale of the real estate, so as to leave his sureties for due administration liable for the whole balance in his hands as administrator *de bonis non,* or"

"2. Whether the payment ought to be applied to the debt due from R. Patton, as administrator, on his administration account, or,"

"3. Whether the payment ought to be applied to the debts due by him in both characters, as commissioner of the court and as administrator *de bonis non,* ratably, in proportion to the amounts of those responsibilities? "

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The court holding the negative on the first question, and being divided on the second and third, they were adjourned to the Supreme Court.

The complainants by their counsel contended in the circuit court that the whole sum of $23,322.56, adjudged against Patton by the decree of 12 June, 1820, ought not to go to the credit of his responsibility as administrator, and that his sureties cannot claim more than its ratable apportionment according to the amount of their respective responsibilities of commissioner and administrator.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

The question presented for decision relates to the application of certain payments made by Patton, one of the defendants. The facts in the case are substantially as follows.

James Hunter, by his last will, devised his estate, real and

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personal, to certain relatives subject to the payment of his debts. Patrick Home, one of the devisees and executors, being the surviving executor named in the will, having taken upon himself the execution of it, sold a part of the real estate to one Dunbar.

The complainants, creditors of Hunter, brought their suit in the circuit court against Home as executor and devisee and against others to set aside the sale to Dunbar and obtain satisfaction of their debts. After having answered, Home died in the spring of 1803, and administration *de bonis non* on Hunter's estate was granted to Patton.

Being made defendant, he filed his answer in 1803, and a decree was made appointing him, John Minor, and another commissioners to sell, on twelve months'

credit, the unsold lands of Hunter and to hold the proceeds subject to the order of the court. As administrator, Patton received personal property to a considerable amount, and in June, 1803, sold such part of it as was saleable on a credit of twelve months. The remaining lands of Hunter's estate, he and Minor, acting as the commissioners of the court, sold on the same credit in December, 1803.

In the progress of the cause, an amended bill was filed by the complainants, waving all objections to Dunbar's purchase.

Patton, as commissioner, in 1813 reported a balance on the administration account of about 3,312, including interest.

On this report, in June, 1815, the court directed payment by Patton and Minor as commissioners of one dollar in the pound to the creditors named, and on 3 December following ordered a provisional payment to the complainants to be made out of the moneys in the hands of Patton as administrator, if any he hath, and that he and Minor as commissioners do pay, &c.; This decree seems not to have been acted on. On 12 June, 1820, the claims of the complainants having been established, the court, with a view, as expressed, to put them on an equality with the creditors named in the decree of 1815, ordered

"That out of the funds of the estate of James Hunter at the disposition of the court,

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Robert Patton, one of the commissioners and administrator *de bonis non,* do pay the sum of $23,322.56."

This sum was paid.

The decree of 1820 having directed a further account, it was taken, and the sums in the hands of Patton, as commissioner and administrator, were stated. After the correction of various errors by the court in the reports made, it was ascertained in 1821 that after paying the sum of $23,322.56, there was still a balance in the hands of Patton of 6,040 4s. 4p., and the court decreed that he should pay that sum to the creditors of the estate as administrator and as one of the

commissioners of the court.

Patton had given security as administrator, but none as commissioner. To make the securities liable, he being insolvent, a supplemental bill was filed against them, and by the answer of one of them the question of liability is raised.

The point presented for consideration is whether the payment shall first be applied to the credit of the administration fund, or ratably to both funds?

If the payment shall be decided to have been made out of the administration fund, the sureties are discharged, as the sum paid was greater than the amount Patton held in his hand as administrator. The payment also exceeded the sum he held as commissioner, though this fund was larger than the other.

It is earnestly contended in the learned and able argument in writing submitted to the Court by the defendants' counsel that the administration fund must first be exhausted. To determine the question raised, it is not important to ascertain the precise sum which Patton held in his hands in each capacity, as the amount paid exceeded his liability in either.

In Virginia, the moneys arising from the sale of personal property are called legal assets, in the hands of an executor or administrator, and those which arise from the sale of real property are denominated equitable assets. By the law, the executor or administrator is required out of the legal assets

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to pay the creditors of the estate, according to the dignity of their demands; but the equitable assets are applied equally to all the creditors in proportion to their claims.

The payment was made under the decree of 1820, and if the court did not direct specifically in what manner the two funds should be applied, it is contended that Patton had a right himself to determine, and consequently, by applying first the legal assets, to discharge his sureties.

If the correctness of this argument were admitted, it would still be important to show that the payment was made by Patton as administrator. This fact might be established by an unequivocal act or by circumstances.

This is clearly not a case in which the creditor may apply the payment, no specific directions having been given by the debtor.

To each of the creditors there was but one debt due, on which the payment was made; it could therefore be applied only to the payment of such debt.

Had debts of different dignities been due to each creditor, and no specific application of the payment had been directed by Patton, and the creditor had applied it by some unequivocal act, his right to do so would not, perhaps, be questioned.

Whether the application must be made by the creditor at the time the money is received or within a reasonable time afterwards, it can be of no importance in this case to inquire.

There may be cases where, no indication having been given as to the application of the payment by the debtor or creditor, the law will make it. But it cannot be admitted that in such cases the payment will be uniformly applied to the extinguishment of a debt of the highest dignity. That there are authorities which favor such an application is true, but they have been controverted by other adjudications.

From the terms of the decree of December, 1815, the court undoubtedly intended that the legal assets should first be applied in making the payments directed and then the equitable assets. But no such direction is given in the decree of 1820. The payment is directed to be made out of both funds in the hands of Patton without any indication that either should be first applied in preference to the other.

If, in making the payment, Patton could exercise his discretion in first applying the legal assets, has he afforded any evidence of having done so? Has he by any entry in his accounts, or by a return to the court, or in any other manner shown a special application of the money? Within what time was it necessary for him to make his election? His intention is attempted to be adduced from his interest, aided by the principles of law referred to.

As administrator, it is said, he was responsible for the funds in his hands, by various modes of proceedings, summary in their character, and from this it is inferred that he intended to relieve himself from such a responsibility. To relieve his securities, it is urged, must have formed an additional motive, to which might be superadded the oath he had taken as administrator. But on the other hand it may be urged that the motives were not less strong. As commissioner, if unfaithful to his trust, he was subject to the penalties which a court of chancery might impose. It would seem, therefore, that the circumstances of the case do not authorize an inference that any determination was made by Patton on the subject.

When, in 1821, the decree was rendered against him as administrator and as commissioner for the payment of the balance which appeared to be in his hands, no objection seems to have been made to the decree. It could not have been entered without giving a construction to the decree of 1820, for if the $23,322.56 had been paid by first applying the legal assets, the decree of 1821 must have directed the balance to be paid as commissioner. This decree therefore goes very strongly to show in what light the above payment was considered by the court and the administrator.

Can it be supposed that when the decree of 1821 was about being entered against Patton, holding him responsible in both capacities, that he would have remained silent if his liability as administrator had ceased? The rendition of this decree must clearly refute any presumption attempted to be raised either from the facts or circumstances of the case that the legal assets were considered as having been first applied by the administrator in making the payment.

Having had a reasonable time to make his election, is it not too late to do so after the controversy has arisen? And is it competent for the sureties of the administrator to exonerate themselves from responsibility by attempting to give a construction to his acts which seems not to have been given by himself?

They first raise the question as to the fund out of which the payment was made. If then Patton did no act which showed an intention to apply first the legal assets, in making the payment, and if it was not the right of the creditor to make the application, does the law make it, as contended for, under all the circumstances of the case? Had Patton made the application, a question might have been raised whether it was competent for him to do so.

Jurisdiction over the legal fund was assumed by a court of chancery. It was for that court, by its decree, to make the application of the fund as the law required, and having done so, the administrator could exercise no discretion over it. The same may be said as to the priorities of the claims set up by the complainants and established by a decree of the court.

That the administrator was limited in making payment by the terms of the decree will not be desired. It was not for him to pay more in the pound than was directed, nor to give a preference to one of the claims over another on account of its higher dignity. The decree placed them on an equality as to the payment, and this was clearly within the province of the court, the estate of Hunter being insolvent.

The entire fund in the hands of Patton was subject to the distribution of the court. That part of the fund which, in the hands of the administrator, constituted legal assets, and under the law was directed to be applied in a special manner to the extinguishment of debts, was taken from his control by the court of chancery. The fund was applied by the court, and not by the administrator. His official capacity was only noticed to ascertain the extent of his responsibility, and the payment was directed accordingly. He had no discretion to exercise, no rule to observe, but that which the decree laid down. As administrator and commissioner he was directed to make the payment, because in these capacities he had received an amount

greater than the sum directed to be paid. The payment was made in pursuance of the decree.

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Suppose Patton, as commissioner, had given sureties who were now before the court, and objecting to the application of money as contended for. This would present a question between sureties. The insolvency of their principal renders a loss inevitable, and the inquiry would be how shall this loss be sustained.

Under such circumstances, could any substantial reason be given why the sureties to the administration bond should be exonerated in preference to the others? No distinguishing quality exists either in the fund as it now stands or the debts to be paid to determine this preference. It is not found in the act of Patton, if his discretion might have been exercised on the subject. The law has fixed no rule applicable to the case. By the decree, both funds are placed on an equality. Payment is directed to be made from both.

Although Patton give no security as commissioner, yet the question, in principle, is the same. A loss must be sustained, and by whom shall it be borne?

The sureties on the administration bond, as has been shown, cannot claim an exemption from responsibility under the payment made in pursuance of the decree, nor can the creditors escape a portion of the loss.

If this were a question of responsibility between sureties under the decree of the court, the payment would be considered as having been made from each fund in the hands of Patton in proportion to its amount.

This rule will apply with the same justice to the parties interested under the circumstances of this case. Indeed, it would seem that no other construction could be given with equal propriety to the decree of the court. It is consonant to the principles of justice and within the equitable powers of the court.

On a view of the facts and circumstances of this case, the Court thinks that the payment of $23,322.56 should be deducted ratably from each of the funds in the hands of Patton at the time it was made.

This cause came on to be heard on the transcript of the

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record from the Circuit Court of the United States for the Eastern District of Virginia and on the questions and points on which the judges of the said circuit court were opposed in opinion and which were certified to this Court for its opinion in pursuance of the act of Congress for that purpose made and provided, and was argued by counsel, on consideration whereof it is the opinion of this Court that the payment of $23,322.56 should be deducted ratably from each of the funds in the hands of Patton at the time the decree of 12 June, 1820, was made.

Whereupon it is ordered and decreed by this Court to be certified to the judges of the said Circuit Court for the Eastern District of Virginia that the payment of $23,322.56 should be deducted ratably from each of the funds in the hands of Patton at the time the decree of 12 June, 1820, was made.