

Hunter Vs. United States

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Appellant : Hunter

Respondent : United States

Judgement :

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APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF RHODE ISLAND

SYLLABUS

In the original bill filed by the United States in the Circuit Court of Rhode Island, the claim of the United States to payment of a debt due to it was asserted on the ground of an assignment made to the United States by an insolvent debtor who

was discharged from imprisonment on the condition that he should make such an assignment. The debtor had been previously discharged under the insolvent law of Rhode Island, and had made, on such discharge, a general assignment for the benefit of his creditors. Afterwards an amended bill was filed in which the claim of the United States was placed upon the priority given to the United States by the act of Congress against their debtors who have become insolvent. It was objected that the United States could not change the ground of its claim, but must rest it as presented by the original bill, on the special assignment made to them.

By the Court:

"It is true, as the defendant insists, that the original bill still remains on the record and forms a part of the case. But the amendment presents a new state of facts, which it was competent for the complainants to do, and on the hearing, they may rely on the whole case made in the bill or may abandon some of the special prayers it contains."

The same right of priority which belongs to the government attaches to the claim of an individual who, as surety, has paid money to the government.

The assignment under the insolvent law of Rhode Island could only take effect from the time it was made. Until the court, in the exercise of its judgment, determines that the applicant is entitled to the benefit of the law, and in pursuance of its requisitions he assigns his property, the proceedings are inchoate, and do not relieve the party. It is the transfer which vests in the assignee the property of the insolvent for the benefit of his creditors. If before the judgment of the court the petitioner fail to prosecute his petition, or discontinue it, his property and person are liable to execution as though he had not applied for the benefit of the law. And if after the judgment of the court he fail to assign his property, it will be liable to be taken by his creditors on execution.

The property placed on the inventory of an insolvent may be protected from execution while he prosecutes his petition, but this cannot exclude the claim of a creditor who obtains a judgment before the assignment.

The United States obtained a judgment against Smith, an insolvent debtor, previous to his assignment under the insolvent laws of Rhode Island. Under his assignment, a debt for money paid by him to the United States as surety on duty bonds for the Crarys passed to his assignee. The Crarys had claims upon Spain which were afterwards paid under the Florida treaty, and the assignee of Smith received the amount of the said Spanish claim in satisfaction of the payments made for the duty bonds by Smith. The judgment by the United States against Smith having preceded the assignment, and the receipt and distribution of the money received from the Spanish claim under the insolvent law, the government having an unquestionable right of priority on all the property of Smith, it extended to the claim of Smith on the Crarys. If the right of

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the United States to a priority of payment covers any part of the property of an insolvent, it must extend to the whole until the debt is paid.

The claim of Smith on the Crarys was properly included in his assignment under the insolvent laws, however remote the probability may have been at the time of realizing the demand. It was an assignable interest. If at the time of the assignment this claim was contingent, it is no longer so. It has been reduced into possession, and is now in the hands of the representative of the debtor to the general government. If under such circumstances the priority of the government does not exist, it would be difficult to present a stronger case for the operation of this prerogative.

By a special act of Congress, the principal debtor was discharged from imprisonment, and the expression is omitted in this act, which is used in the general act passed June 6, 1798, "providing for the relief of persons imprisoned for debts due to the United States" that "the judgment shall remain good and sufficient at law." In the special act it was declared that any estate which the debtor "may subsequently acquire shall be liable to be taken in the same manner as if he had not been imprisoned and discharged." The special act did not release the judgment, and did not affect the rights of the United States against the surety.

That the same rules of contract are applicable where the sovereign is a party as between individuals is admitted, but the right of the sovereign to discharge the debtor from imprisonment without releasing the debt is clear.

The act of government in releasing both the principal and surety from imprisonment was designed for the benefit of unfortunate debtors, and no unnecessary obstructions should be opposed to the exercise of so humane a policy. If the discharge of the principal under such circumstances should be a release of the debt against the surety, the consequence would be that the principal must remain in jail until the process of the law were exhausted against the surety. This would operate against the liberty of the citizen, and should be waived unless required to secure the public interest.

A discharge from prison by operation of law does not prevent the judgment creditor from prosecuting his judgment against the estate of the defendant. To this rule a discharge under the special provisions of the bankrupt law may form an exception.

The Secretary of the Treasury was authorized to deduct from the sum payable to a debtor to the United States the sum due to the United States, and he paid to his assignee the whole sum which was awarded to him under the Florida treaty, omitting to make the deduction of the debt due to the United States. By the Court:

"It cannot be admitted that an omission of duty of this kind, as a payment by mistake by an officer, shall bar the claim of the government. If, in violation of his duty, an officer shall knowingly or even corruptly do an act injurious to the public, can it be considered obligatory? He can only bind the government by acts which come within the just exercise of his official powers."

Where a fund was in the hands of an assignee of an insolvent, out of which the United States asserted a right to a priority of payment, in such a case, proceedings at law might not be adequate, and it was proper to proceed in equity.

The appellant, William Hunter, was the assignee of Archibald Crary and Frederick Crary under the insolvent law of Rhode Island. The Crarys obtained the benefit of that law in June, 1809. William Hunter was duly appointed one of their assignees, and is now the sole surviving assignee. One Jacob Smith had, as surety in a custom house bond, been compelled to pay to the United States for the Crarys about \$2,125. This payment was made in May, 1808. Jacob Smith soon afterwards became himself insolvent, *viz.*, in October, 1809, obtained the benefit of the same insolvent law, and William Hunter is now his sole surviving assignee. Jacob Smith and one William McGee were sureties for William Peck as Collector of Taxes for the Rhode Island District, and the United States obtained a judgment for a large sum, *viz.*, \$13,508, against the principal and sureties in August, 1811. The suit was commenced in May of the same year. Upon his commitment to prison, by force of the execution issued in his case, Smith petitioned the then Secretary of the Treasury for relief, in which petition he stated that he was reduced to poverty, that he had obtained the benefit of the Rhode Island insolvent law, and surrendered all his property as compelled by that law to his assignee. He states in that petition that his own insolvency was hurried, if not occasioned, by his having paid considerable sums on account of suretyship at the custom house, and in particular this very sum of two thousand some hundred dollars for the Crarys in the year 1809. Upon this full statement of the case, relief was granted him, and he was discharged from prison in compliance with a warrant from the Treasury on 17 October, 1811.

Before his discharge, Smith executed an assignment of his property to the United States. The assignment purports to convey all and the same property, which was conveyed by his previous assignment under the insolvent law. He recites and includes his sworn inventory under the insolvent law, and refers to his demand against the Crarys.

After the release of Smith, the surety, the United States in 1812 imprisoned Peck the delinquent principal, and Congress discharged him from that imprisonment upon his assignment and conveyance of all his estate, real and personal,

which he then owned or might be entitled to. This was done on 12 June, 1812.

In July, 1824, under the peculiar circumstances of delay, difficulty, and embarrassment set forth in the answer, the assignee of the Crarys recovered and received from the United States under their treaty with Spain, and in conformity to statutes by them enacted, the sum of money as stated in the bill and as admitted in the answer.

The appellant in his answers contended that so much of this sum as by operation of law belonged to Smith, he, as the assignee of Smith, was bound to pay over to the ascertained creditors of Smith, for whose benefit the assignment under the state insolvent law was made. In the original bill, the claim of the United States was rested upon the assignment made to them by Smith, but afterwards an amended bill was filed in which their right to payment of the whole amount of the judgment against Smith is asserted on their right of priority under the laws of the United States.

The circuit Court of Rhode Island give a decree in favor of the United States, and the defendant appealed to this Court.

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

The material facts in the case are these.

William Hunter, the defendant in the court below, is the surviving assignee of Archibald and Frederick Crary, who in June, 1809, obtained the benefit of the insolvent law of Rhode Island. One Jacob Smith, as surety on a custom house bond, had been compelled to pay to the United States, in May, 1808, for the Crarys, about \$2,125. In February, 1810, Smith filed his petition for the benefit of the insolvent law, and in August, 1811, Hunter and one Littlefield, now deceased, were appointed assignees. On 3 September following, Smith made to them an assignment of his property. Smith and one McGee were sureties for William Peck, as Marshal of the Rhode Island district, who became a defaulter to the government

and against whom and his sureties, in August, 1811, a judgment was recovered for \$13,508.

Upon his being afterwards committed to prison on an alias execution issued in pursuance of this judgment, Smith petitioned the Secretary of the Treasury for relief, and stated that he was reduced to poverty and had assigned all his property under the insolvent law. His insolvency, he alleged, had been accelerated, if not produced, by his having paid large sums,

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as surety, on certain custom house bonds, and particularly the above sum for the Crarys. He was discharged by the Secretary, on 17 October, 1811, on his making a formal assignment of all his effects to the United States. This assignment purports to convey the same property which he had previously assigned. In 1812, the United States imprisoned Peck, the principal, on execution, and in the month of June in the same year he was discharged by act of Congress.

In July, 1804, Hunter, as the assignee of the Crarys, obtained from the United States, under their treaty with Spain, the sum of \$8,150.81. Out of this sum, Smith was entitled to the amount he paid for the Crarys, and the United States claims the same from Hunter as assignee in part satisfaction of its judgment against Smith. Hunter claims this sum in behalf of the creditors of Smith, under his first assignment.

By the original bill, the government rested its claim on the second assignment. This clearly cannot be sustained.

Smith, under the insolvent law of Rhode Island, having assigned all his property for the benefit of his creditors, could not, by a subsequent assignment to the United States, affect the first transfer. The government can set up no right under the second assignment which might not be claimed by any other creditor.

This ground is abandoned by the amended bill, and the claim of the government is placed on its priority under the act of Congress. By this act, a preference is given

to a government debt over all others, and if the debtor be insolvent, such debt must first be satisfied

It is true, as the defendant insists, that the original bill still remains in the record and forms a part of the case. But the amendment presents a new state of facts, which it was competent for the complainants to do, and on the hearing they may rely upon the whole case made in the bill, or may abandon some of the special prayers it contains.

The same right of priority which belongs to the government attaches to the claim of an individual who, as surety, has paid money to the government. Under this provision, Smith could claim a preference to other creditors for the

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money he paid as surety for the Crarys, and on his right the priority of the government is asserted.

The defendant resists this demand on various grounds. He contends in the first place that the doctrine of priority is not applicable in this case.

This prerogative of the government can only operate, it is insisted, on a debt due at the time. That it cannot reach a debt which depends upon a future contingency, and such was the claim of the Crarys under the Spanish treaty. It was not realized until in June, 1824, nearly thirteen years after the benefit of the insolvent law had been extended to the claimants.

It is also contended that the first assignment of Smith had relation back and took effect from the date of this inventory, which was prior to the judgment obtained against him by the United States. This being the case, the priority of the government could not attach, it is urged, for it can only act on a debt, and there was no debt in this case as against Smith until judgment was entered.

The assignment under the insolvent law could only take effect from the time it was made. Until the court, in the exercise of its judgment, determines that the applicant is entitled to the benefit of the law, and in pursuance of its requisitions he assigns

his property, the proceedings are inchoate and do not relieve the party. It is the transfer which vests in the assignee the property of the insolvent for the benefit of his creditors. If, before the judgment of the court, the petitioner fail to prosecute his petition or discontinue it, his property and person are liable to execution the same as though he had not applied for the benefit of the law. And if, after the judgment of the court, he fail to assign his property, it will be liable to be taken by his creditors on execution.

The property placed upon the inventory of an insolvent may be protected from execution while he prosecutes his petition, but this cannot exclude the claim of a creditor who obtains a judgment before the assignment. If this Spanish claim had passed into the hands of the assignee of Smith and been distributed by him before the debt of the United States was established or notice of its existence had been given to him, no controversy could have arisen on the subject.

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The defendant, as assignee, could not have been held responsible under such circumstances, nor could the creditors who received payment have been compelled to refund to the government.

If the judgment of the government had not preceded the assignment of Smith, there might have been some ground to question the right of priority which is contended for.

But the judgment preceded the assignment, which gave the government an unquestionable right of priority on all the property of Smith. Did not this right extend to the claim on the Crarys? It would seem that no doubt can exist on this subject. If the right cover any part of the property of the insolvent, it must extend to the whole until the debt be satisfied.

It was proper for Smith to include in his assignment the claim on the Crarys. However remote the probability may have been at that time of realizing this demand, still under the insolvent law it was an assignable interest. If, at the time of

the assignment, this claim was contingent, it is no longer so. It has been reduced into possession, and is now in the hands of the representative of the debtor to the government.

If under such circumstances the priority of the government does not exist, it cannot be said to exist in any case. It would be difficult to present a stronger case for the operation of this prerogative.

But it is contended by the defendant below that if the doctrine of preference or priority be applicable to this case, the United States, by various acts, has waived it.

The release of Peck from imprisonment by the act of Congress, under the circumstances of the case, it is urged, was a release of Smith the surety.

This act was passed 24 June, 1812, and it provided that before his discharge, Peck should assign "all his estate, real and personal, which he may now own or be entitled to, for the use and benefit of the United States." And it also provided

"That any estate, real or personal, which the said William Peck may hereafter acquire shall be liable to be taken in the same manner as if he had not been imprisoned and discharge. "

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By the act providing for the relief of persons imprisoned for debt due to the United States, passed June 6, 1798, the Secretary of the Treasury is authorized to discharge in certain cases, and the individual so discharged, it is declared, "shall not be liable to be imprisoned again for the same debt, but the judgment shall remain good and sufficient in law."

As in the act of 1798, there is an express provision that "the judgment shall remain good," which is omitted in the act discharging Peck, a doubt has been raised whether the judgment against him can be further prosecuted. If by this act the judgment be released against Peck as a matter of course, his surety is discharged. This act specially provides "that any estate which Peck may subsequently acquire shall be liable to be taken in the same manner as if he had not been imprisoned

and discharged."

From this provision it clearly appears that the release from imprisonment was the only object of the statute, and a proper construction of it does not release the judgment. If the property of Peck may be taken "in the same manner as if he had not been imprisoned," it may be taken under the same judgment.

That the same rules of contract as applicable where the sovereign is party as between individuals is admitted, but the right of the sovereign to discharge the debtor from imprisonment without releasing the debt is clear. And how can such a release discharge the surety?

Does it embarrass his recourse against the principal? In this case, if Smith had paid the debt to the government, he might have resorted to all the remedies Peck which the law allows in any case.

The recourse of the government against the property of Peck still remains unimpaired; consequently the judgment remains unsatisfied, and no act has been done to the prejudice of the surety.

The cases in 2 Dane's Abridg. 155; 3 Sergeant & Rawle 465-466, and [2 U. S. 2](#) Dall. 373, were cited to show that while a defendant is charged in execution, the debt is considered as satisfied, and that a discharge of one co-debtor is a discharge of all.

The imprisonment of a defendant is a means to enforce the payment of the judgment, and is only considered a satisfaction

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of it so far as to suspend all other process. If, by the operation of law, by an escape, or by any other means, without the assent of the plaintiff, the defendant be released from prison, the judgment still remains in full force against him.

The imprisonment of Peck the principal was no bar to an execution against the body of his surety. In the case under consideration, Smith had been imprisoned

and discharged before Peck was confined. These proceedings were all regular, however great the hardship may have been to the surety, and did not in any manner lessen the responsibility of either principal or surety.

The authorities read in the argument going to show a release of the sureties where the creditor without their assent enlarges the time of payment, &c., are not considered as opposed to the doctrines here laid down.

The act of the government in releasing both the principal and surety from imprisonment was designed for the benefit of the unfortunate debtors, and no unnecessary obstructions should be opposed to the exercise of so humane a policy. If the discharge of the principal under such circumstances should be a release of the debt against the surety, the consequence would be that the principal must remain in jail until the process of the law were exhausted against his surety. This would operate against the liberty of the citizen, and should be avoided unless required to secure the public interest.

A discharge from prison by operation of law does not prevent the judgment creditor from prosecuting his judgment against the estate of the defendant. To this rule a discharge under the special provisions of a bankrupt law may form an exception.

In the cases under consideration, the defendants were discharged under laws which expressly reserved the right to the government to enforce the judgment against the property of the defendants.

In [26 U. S. 1](#) Pet. 573, this Court decided, on a full consideration of the case, that a discharge of the principal under an act of Congress did not release the debt against the surety.

By an Act of Congress of 24 May, 1824, respecting payments under the Spanish treaty, it is provided,

"That in all

cases where the person or persons in whose name or for whose benefit and interest the aforesaid awards shall be made shall be in debt and in arrears to the United States, the United States, the Secretary of the Treasury shall retain the same out of the amount of the aforesaid awards,"

&c.;

Under this provision, it is contended that it was the duty of the Secretary to retain the amount of Smith's demand against the Crarys, and not having done so, the payment must be considered as an abandonment of the claim. That the Secretary must have had notice of Smith's claim is insisted on because it was stated on his schedule which was assigned to the United States, and also in his petition to the Secretary of the Treasury on which he was released from imprisonment.

Having a knowledge of this claim of Smith's against the Crarys, it was in the power of the Secretary, under the law, to withhold it and appropriate it in part discharge of the judgment. The priority which first attached to Smith, and through him to the Crarys, would have enabled the government, without the aid of the other provision, to retain the money. But can the payment of it under such circumstances operate as a release to Smith?

It might be dangerous to give the same effect to a voluntary payment by an agent of the government as if made by an individual in his own right. The concerns of the government are so complicated and extensive that no head of any branch of it can have the same personal knowledge of the details of business which may be presumed in private affairs. And if in the case under consideration some clerk in the Treasury Department, or even the Secretary, did pay to the assignee of the Crarys the amount claimed by Smith which might and perhaps ought to have been retained, is it an abandonment of the claim?

Where an officer of the government is in arrears, his salary is required to be withheld until the sum in arrears shall be paid. In such a case, the books of the Treasury would furnish its officers with notice of the delinquency; and yet would it be contended that a payment of the salary which ought to have been retained

would release the debt?

It cannot be admitted that an omission of duty of this kind, as a payment through mistake, by an officer shall bar

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the claim of the government. If, in violation of his duty, an officer shall knowingly or even corruptly do an act injurious to the public, can it be considered obligatory? He can only bind the government by acts which come within a just exercise of his official power.

The payment to the assignee of the Crarys can in no respect affect the claim now set up against the assignee of Smith.

An objection is urged on the ground that the United States has failed to prosecute its claim with sufficient diligence, and that it is subject to the imputation of staleness.

Until the sum of money in controversy was received by the assignee of Smith in 1824, the United States could not be charged with a want of diligence in prosecuting its claim against Smith. It had obtained a judgment in 1811, and there was no property within the reach of any process in that judgment by which it could be satisfied.

To subject the above claim to this judgment, the bill in the present case was filed in 1824. If, therefore, a want of diligence could in any case be charged against the government, there is no ground to make the charge in this case.

The last objection urged by the defendant is that there was full and ample relief to be obtained at law, and consequently chancery cannot take jurisdiction of the case.

In his capacity as trustee, the government seeks to make Hunter liable. He bears the same relation to the creditors of Smith. It was proper in him, conceiving as he did that the fund in his hands should be paid to these creditors, to resist the claim

of the government.

Until its right of priority, under all the circumstances of the case, was judicially established, he, in the exercise of his discretion, might withhold the payment. The trustee can only be desirous of making the payment as the law requires.

How is this liability to be enforced? What process at law would be adequate to give the relief prayed for in the bill?

It is the peculiar province of equity to compel the execution of trusts. In this case, it is conceived, the proceeding at law would not be adequate. The fund to be reached was in the hands of a trustee, and it was important that it should not pass from his hands to the creditors of Smith.

The amount of the claim against the Crarays might be

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disputed; the trustee was entitled to his commissions, and other difficulties were likely to arise in the progress of the investigation which could only be fully adjusted, at the instance of the United States, by a court of chancery. No doubt exists, therefore, that a resort to the equity jurisdiction of the circuit court in this case was proper and necessary. The judgment of the circuit court must be

Affirmed, but without costs.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Rhode Island and was argued by counsel, on consideration whereof it is ordered and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed without costs.