

Smith Vs. Union Bank of Georgetown

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Court : US Supreme Court

Decided On : 1831

Appeal No. : 30 U.S. 518

Appellant : Smith

Respondent : Union Bank of Georgetown

Judgement :

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Smith v. Union Bank of Georgetown

30 U.S. (5 Pet.) 518

ERROR TO THE CIRCUIT COURT OF THE DISTRICT

OF COLUMBIA FOR THE COUNTY OF WASHINGTON

SYLLABUS

Robertson was domiciliated at Norfolk in Virginia, and there contracted a debt on bond to T. He was also indebted to the Union Bank of Georgetown, in the District

of Columbia, on simple contract. He died intestate at Bedford in Pennsylvania, leaving personal estate in the City of Washington in the District of Columbia, of which administration was there granted. By the laws of Maryland, all debts are of equal dignity in administration, and by the laws of Virginia, where R. was domiciliated, debts on bond are preferred. The assets in the hands of the administrator were insufficient to discharge the bond and simple contract debts. *Held* that the effects of the intestate, in the hands of the administrator, are to be distributed among his creditors according to the laws of Maryland, and not according to the laws of Virginia.

This case came before the circuit court on the following case agreed.

"Samuel Robertson, a native of the State of Maryland, a purser in the Navy of the United States, and as such purser, for several years before his death, stationed and domiciliated at Norfolk, in the State of Virginia, died, in the year 182_, at Bedford in Pennsylvania, intestate, insolvent, whither he had gone on a visit for the benefit of his health. He was at the time of his death indebted to the plaintiffs, residing in the District of Columbia, on simple contract, not under seal, entered into here in the sum of \$2,228, with legal interest thereon from 3 November, 1818 till paid, which sum of money and interest still remain due and unpaid, and the said Robertson, at the time of his death, was also indebted to Thompson, residing in Virginia, upon contracts and bonds under seal, entered into in the State of Virginia, in a sum exceeding the whole amount of assets in the hands of the defendant, as administrator as aforesaid. The said Robertson, at the time of his death, was possessed of personal assets in Washington County, in this district. The defendant, Clement Smith, took out letters of administration

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upon his estate in this county, and has collected in this county, and now holds in his hands as administrator, the sum of \$8,390.015."

"The plaintiffs claim a dividend of the assets according to the laws of administration in force in this county. The defendant resists payment upon the

ground of the debt due to said Thompson, who claims a priority as creditor upon the said sealed contracts, and that the assets must be paid away to the creditors pursuant to the laws in force in Virginia. If the court is of opinion that the assets are to be administered, as to creditors according to the laws in force in this county, then judgment to be entered for the plaintiffs for the amount of their debt aforesaid, to bind assets in the hands of defendant, C. Smith, the administrator: if otherwise, then judgment of *non pross.* "

Upon this case the circuit court gave judgment for the plaintiff and the defendant prosecuted this writ of error.

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MR. JUSTICE JOHNSON delivered the opinion of the Court.

The judgment below is rendered upon an agreed case, on which the following state of facts is exhibited.

The defendant's testator was domiciled at Norfolk, in Virginia, at which place he contracted a debt on bond to one Thompson. He was also indebted to the Union Bank, the defendant in error, on simple contract. He died at Bedford in Pennsylvania, and the defendant Smith administered on his estate in the County of Washington, in this District. Robertson at the time of his death was possessed of personal assets in the County of Washington, and the administrator, having reduced these assets into possession, now holds them subject to his debts.

By the laws of Maryland, which govern the County of Washington, all debts are of equal dignity in administration; but by the laws of Virginia, the country of Robertson's domicile, bond debts have preference, and the assets are insufficient to satisfy both. The question, then, is whether the bond debt shall take precedence, or come in average with the simple contract debts.

On the bearing of the *lex loci contractus* on this question, nothing need be added to the doctrine of THE CHIEF JUSTICE of this Court in the case of *Harrison v. Sterry*, to-wit:

"The law of the place where the contract is made is generally speaking the law of the contract -- that is, the law by which the contract is expounded. But the right of priority forms no part of the contract itself."

The passage which follows these words in the same opinion will present, in as succinct a form as they need be stated, the propositions on the correctness of which the decision of this

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cause must mainly depend. It is in these terms:

"It [the right of priority] is intrinsic, and rather a personal privilege dependent on the law of the place where the property lies, and where the court sits, which is to decide the cause. In the familiar case of the administration of the estate of a deceased person, the assets are always distributed according to the dignity of the debt as regulated by the law of the country where the representative of the deceased acts and from which he derives his power."

The argument urged against this doctrine is that personal property has no situs, that it follows the law of the person, and that there is no other rule that can give uniformity and consistency to its administration.

In support of this argument, great industry has been exhibited in collecting and collating the cases which relate to the distribution of intestates, effects and the execution of the British bankrupt law, and analogy, it is insisted, requires the application of the rule of those cases to that of the payment of debts.

With regard to the first class of cases, we expect to be understood as not intending to dispose of them, directly or incidentally. Whenever a case arises upon the distribution of an intestate's effects exhibiting a conflict between the laws of the domicile and those of the situs, it will be time enough to give the views of this Court on the law of that case. And as the cases in which the British courts have asserted a power over the effects of a bankrupt, the situs of which placed them beyond the action of their bankrupt laws, we are not aware of any instance in

which they have gone further than to treat that power as an incident to the jurisdiction of these laws over their own subjects. As in the instance in which a British subject had by process of law in this country possessed himself of the effects of a British bankrupt to the prejudice of the other creditors. That there is no violation of principle in doing this is fully affirmed in the same case of *Harrison v. Sterry*, in which this government and this Court availed themselves of jurisdiction in fact over the effects of a foreign bankrupt so as to subject them to the priority given by our laws to the debts due our government, each government thus asserting the power of its own laws over the subject matter when within its control.

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That personal property has no situs seems rather a metaphysical position than a practical and legal truth. We are now considering the subject with regard to subjecting such property to the payment of debts through the medium of letters of administration. And here there is much reason for maintaining that even the common law has given it a situs by reference to any circumstances which mark it locally with discrimination and precision.

Thus, in the case of *Byron v. Byron*, Hil. 38 Elizab.Cro. 472, Anderson, Chief Justice, says

"The debt is where the bond is, being upon a specialty, but debt upon contract follows the person of the debtor, and this difference has been oftentimes agreed."

So Godolphin lays down the same distinction as established law. Orphan's Legacy 70. And Swinburn lays down the same rule with still greater precision, as well against the effect of domicile as of the place of contract. For he says "Debt shall be accounted goods, as to the granting of administration, where the bond was at his [creditor's] death, not where it was made." And again:

"Debts due the testator will make *bona notabilia* as well as goods in possession, but there is a difference between bonds and specialties and debts due on simple contracts, for bond debts make *bona notabilia*, where the bonds or other

specialties are at the time of the death of him whose they are, and not where he dwelt or died. But debts on simple contracts are *bona notabilia* in that country where the debtor dwells."

Part 6, ch. 11. And so of judgments, locality is given them by the situs of the court where they are entered. Carthew 149; 3 Mod. 324; 1 Salk. 40; Dyer, 305; 1 Roll.Abr. 908; 1 Plow. 25; Carthew, 373; Comb. 392, are cited for these distinctions.

It is not unworthy of remark that in almost every treaty between civilized nations we find an article stipulating for permission to remove the goods of a deceased subject to the county of his domicile. And from the generality of the stipulation, it would seem to be intended for the purpose of subjecting the goods to the law of the deceased's country or domicile, even as to their application to the payment of debt. There is the more reason to believe this with regard to our own treaties, since there are two instances in which the generality of that provision is deviated from, the one in favor of the payment of debts due where the goods are

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and the other subjecting the right of property to the law of the situs. I mean the French consular convention of 1788, by the 5th article of which it is expressly stipulated that goods shall be subjected to the payment of debts due in the foreign country. And both our treaties with Prussia contain a stipulation in the 10th article

"That if questions shall arise among several claimants to which of them the said goods belong, the same shall be decided finally by the laws and judges of the land wherein the said goods are."

It would seem that such a provision would be wholly unnecessary if there existed any established rule of international law by which the law of the domicile could be enforced in this regard in the country of the situs, or if the fact of locality did not subject the goods to the laws of the government under which they were found at the party's death.

In point of fact, it cannot be questioned that goods thus found within the limits of a sovereign's jurisdiction are subject to his laws; it would be an absurdity in terms to affirm the contrary. Even the person of an ambassador is exempted from jurisdiction only by an established exception from the general principle. And the onus lies certainly upon those who argue here for the precedence of the law of the domicile to establish a similar exception in favor of foreign debts.

But if we look into books, we do not find it there, for it is an acknowledged doctrine that in conflicts of rights, those arising under our own laws, if not superseded in point of time, shall take precedence, "*majus jus nostrum quam jus alienum servemus.*" The obligation of the sovereign to enforce his own laws and protect his own subjects is acknowledged to be paramount.

If we look into facts, we find no evidence there to sustain such an exception, for every sovereign has his own code of administration, varying to infinity as to the order of paying debts, and almost without an exception asserting the right to be himself first paid out of the assets. And the obligation in the administrator to conform to such laws is very generally enforced not only by a bond, but an oath, both of which must rest for their efficacy on the laws of the state which requires them. On what principle, then, shall we insert into all those laws an amendment in favor of foreign creditors, nowhere to

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be found in their provisions, and in many instances operating as a repeal of or proviso to their enactments?

Nor will the search after the exception under consideration be attended with any greater success if extended to the reason and policy of laws.

Property, palpably and visibly possessed, is calculated rather more certainly to give credit than actual residence. The inhabitant of a northern or eastern state may be largely interested as a planter in the south or in Cuba; his agent may there, with or without express instruction, have obtained extensive credits for subsistence or improvements, expended upon the very property itself, when, upon the death of

the proprietor, his estate may turn out insolvent, and insolvent from debts or speculations at the place of his domicile. What greater reason can in such a state of things be urged in favor of the debts of his domicile than what applies to those of the situs of his property? But the reason of the thing may be followed out a little further. Contracts *contra bonos mores*, or against the policy or laws of a state, will not be enforced in the courts of that state, though lawful in the state in which they are entered into. Suppose, then, a bond given for the purchase of a slave were postponed or held void under the laws of the deceased's domicile, though otherwise in the country of the situs of his property, what reason would there be in referring the creditor to the law of the domicile? Or rather, what iniquity in confining him to it?

The actual course of legislative action in every civilized country upon the effects of deceased persons seems wisely calculated to guard against the embarrassments arising out of such conflicts and to preserve in their own hands the means of administering justice according to their own laws and institutions. It has been solemnly adjudged in this Court, and is the general principle in perhaps every state in the union, that one administering in one state cannot bring suit in the courts of another state. This necessity of administering where the debt is to be recovered effectually places the application of the proceeds under the control of the laws of the state of the administration. And if in any instance the rule is deviated from, it forms, *pro hac*, an exception -- a voluntary relinquishment of a right, countenanced by universal practice, and is of the

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character of the treaty stipulations already remarked upon, by which foreign nations surrender virtually a right, which locality certainly puts in their power.

Whether it would or would not be politic to establish a different rule by a convention of the states under constitutional sanction is not a question for our consideration. But such an arrangement could only be carried into effect by a reciprocal relinquishment of the right of granting administration to the country of the domicile of the deceased exclusively, and the mutual concession of the right to

the administrator, so constituted, to prosecute suits everywhere in virtue of the power so locally granted him, both of which concessions would most materially interfere with the exercise of sovereign right, as at present generally asserted and exercised.

There is no error therefore in the judgment below, and the same is affirmed with costs.

MR. JUSTICE Baldwin dissented from the opinion and judgment of the Court.

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