

Boyle Vs. Zacharie

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Court : US Supreme Court

Decided On : 1832

Appeal No. : 31 U.S. 635

Appellant : Boyle

Respondent : Zacharie

Judgement :

Boyle v. Zacharie - 31 U.S. 635 (1832)

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Boyle v. Zacharie

31 U.S. (6 Pet.) 635

APPEAL FROM THE CIRCUIT COURT OF THE

UNITED STATES FOR THE DISTRICT OF MARYLAND

SYLLABUS

Z. and T. were merchants at New Orleans; B. was a resident merchant at Baltimore. B., in 1818, the owner of the ship *Fabius*, sent her to New Orleans, consigned to Z. and T., who procured a freight for her, and the ship having been

attached for a debt due by B. in New Orleans, Z. and T., in order to release her, and enable her to proceed on her voyage, became security for the debt, and were obliged to pay the same by the judgment of a court in New Orleans. B., on being informed that Z. and T. had become security for his debt, approved of the same and promised to indemnify them for any loss they might sustain. On 23 December, 1819, Z and T. instituted a suit against B in the Circuit Court of Maryland for the recovery of the sum paid by them, and in the same month B. made application for the benefit of the insolvent act of Maryland, and received a discharge under the same. In May, 1821, a judgment was rendered by confession in the suit in favor of Z. and T. for \$3,113. And by consent of the parties, a memorandum was entered of record: "This judgment is subject to the legal operation of the defendant's discharge under the insolvent laws of Maryland." By the Court:

"The sole effect of this agreement is to save to the party whatever rights he may claim from the legal operation of the insolvent laws of the State of Maryland. It neither admits their validity nor varies any rights of Z. and T., if they are entitled to them."

The agreement of B. to indemnify Z. and T. is not in contemplation of law a Maryland contract, but a Louisiana contract, by which B. undertook to pay the money, in the place where Z. and T. resided, and not in Maryland. The agreement of Z. and T. by which they procured the relief of the ship *Fabius* was within their authority as consignees of the ship.

Such a contract would be understood by all the parties to be a contract made in the place where the advance was to be made, and the payment, unless otherwise stipulated, would also be understood to be made there. The case would in this aspect fall directly within the authority of [Lanusse v. Barker](#), 3 Wheat. 101, [16 U. S. 146](#) .

The effect of a discharge under an insolvent law of a state is at rest so far as it depends on the antecedent decisions made by this Court. The ultimate opinion delivered by MR. JUSTICE JOHNSON in the case of [Ogden v. Saunders](#), 12 Wheat. 213, [25 U. S. 258](#) , was concurred in and adopted by the three judges

who were in the minority on the general question of the constitutionality of state insolvent laws. So far, then, as decisions upon the subject of state insolvent laws have been made by this Court, they are to be deemed final and conclusive.

The bill filed by the appellant in the circuit court stated, among other matters, that certain persons at New Orleans, trading under the firm of Vincent, Nolte & Co. having attached

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a brig belonging to the plaintiff for a debt alleged by them to be due from said plaintiff, and which brig was consigned to the defendants, they the said defendants became security for the complainant on the said attachment, and the same having been ultimately decided against the complainant, the defendants paid the amount of the debt and expenses, amounting to \$3,113.80. That on 31 December, 1819, the complainant obtained a final discharge under the insolvent laws of Maryland, and that afterwards, to-wit, at the May term, 1821, of the said circuit court, the defendants obtained a judgment against him for the said sum of \$3,113.80, which judgment was entered upon the docket of said court, and agreed to be so received, subject to the legal operation of the discharge of the complainant under the said insolvent laws of Maryland. That execution had been sued out upon said judgment, and a writ of *fieri facias* had been placed in the hands of the marshal of the district, with directions to levy the same on property acquired by the complainant subsequently to his so obtaining his final discharge under the insolvent laws aforesaid, notwithstanding the said entry on the docket of its being confessed, and the confession being received, subject to the legal operation of the insolvent laws of Maryland. That besides the above facts, the defendants had also caused to be issued out of some court in Louisiana an attachment upon the same debt or claim against the complainant, and had laid the said attachment in the hands of persons indebted to the complainant in a large amount, which persons had refused to pay any part of the debts due by them to the complainant, in consequence of the laying of said attachment in their hands. The bill further stated that by the provisions of the insolvent laws of Maryland, the complainant was entitled to be protected in the enjoyment of all property acquired by him since the

date of his discharge under the said insolvent laws except such as he might have acquired by gift, descent, or in his own right by bequest, devise, or in any course of distribution, and that he had not since his discharge aforesaid acquired any property in any of the modes thus specified. And further that no property whatever of which the complainant was possessed or to which he had any

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title could be lawfully taken in execution under the said judgment until a *scire facias* containing proper averments of the acquisition of property by him in someone of the above mentioned modes should be first issued and the facts found to be true either by confession or by verdict of a jury or otherwise according to law. And the bill prayed an injunction to be granted restraining and prohibiting the defendants from levying their execution, and the injunction to that effect was granted and served in due form.

The answer of the defendants, the appellees, stated that in the latter part of the year 1818, the complainant consigned to them at New Orleans a brig called the *Fabius*, and that they procured a freight for her to Liverpool; that after the cargo was actually laden on board of her, and she was about to sail, she was attached at the suit of Vincent, Nolte & Company, for a debt due to them by the complainant, and they, the defendants, and one Richard Relff, with a view to the benefit of the complainant, became security for the complainant and procured the release of the brig. The complainant approved of their acts, and undertook and promised to indemnify them for any loss they might sustain on his account. He afterwards gave the defendants a security for their liability on 1 May, 1819.

The contract of indemnity was as follows:

"I will see Messrs Zacharie & Turner paid whatever sum they have to pay Vincent, Nolte & Company on account of a bill drawn by them on Hugh Boyle for disbursements of the ship *Mohawk*, original bill amount, \$5,451, of which the said Hugh Boyle paid \$3,000; the balance, the said Hugh Boyle contends, is not due to Vincent, Nolte & Co. When decided, it shall be paid."

"Baltimore, 1 May, 1810"

Hugh Boyle, the complainant, and Lemuel Taylor, soon after this circumstance, became insolvent, and the defendants afterwards paid to Vincent, Nolte & Company the sum of \$3,113.80, the amount of the judgment obtained by them against the complainant.

The defendants further stated that they afterwards instituted

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a suit in the Circuit Court of the United States for the District of Maryland against the complainant, and obtained judgment against him for the amount so paid by them on his account, and proceeded thereon as stated in the complainant's bill. They say that the discharge of the complainant by the insolvent laws of the State of Maryland does not prevent their having the full benefit of the execution issued against the complainant's property, which has been acquired to a large amount since the discharge, all of which is liable for the payment of his debts.

The court granted the injunction as prayed for.

The answer admits the issuing of the attachments in New Orleans against the supposed property of the complainant, but states that the defendants in the same denied having any funds, and the proceedings were dismissed.

On 19 May, 1829, the cause was set down for final hearing in the circuit court, and after argument it was decreed that the injunction should be dissolved, and the complainant's bill was dismissed. From this decree the complainant appealed to this Court.

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MR. JUSTICE STORY delivered the opinion of the Court.

The material circumstances are as follows. Zacharie & Turner are, and at the time of the transactions hereafter to be stated were, resident merchants at New

Orleans, and Boyle a resident merchant at Baltimore. In the year 1818, Boyle being the owner of the brig *Fabius*, sent her on a voyage to New Orleans, consigned to Zacharie & Turner, where she arrived and landed her cargo, and Zacharie & Turner procured a freight for her to Liverpool. After the cargo was put

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on board and the brig was ready to sail, she was attached by process of law at the suit of Messrs Vincent, Nolte & Co. of New Orleans as the property of Boyle for a debt due by him to them. Zacharie & Turner, with one Richard Relff, with a view to benefit Boyle and enable the brig to perform her voyage, became security for Boyle upon the attachment, and thus procured the release of the brig. Upon information of the facts, Boyle approved of their conduct and promised to indemnify them for any loss they might sustain on that account. Messrs. Vincent, Nolte & Co. recovered judgment in their suit, and Zacharie & Turner were compelled to pay the debt and expenses, amounting to \$2,113.30, and afterwards, on 23 December, 1819, they instituted a suit against Boyle for the recovery of the same in the Circuit Court of Maryland. On the 31st of the same month of December, 1819, Boyle made application for the benefit of the Insolvent Act of Maryland of 1816, ch. 228, and eventually received a discharge under the same. On 1 May, 1821, judgment by confession was rendered in the suit in favor of Zacharie & Turner for the sum of \$3,113.80, with interest from 15 November, 1819, and costs of suit, and a memorandum was entered of record, by consent of the parties, as follows, "this judgment subject to the legal operation of the defendant's discharge under the insolvent laws of Maryland." The judgment having remained unexecuted for more than a year, it was revived by a *scire facias*, and writs of *feri facias* were issued and renewed from time to time until 12 December, 1827, when a *feri facias* was delivered to the marshal, who levied it on the ship *General Smith*, belonging to Boyle, on 31 March, 1828, and returned it to the May term of the Circuit Court of the same year.

The bill of the plaintiff was filed on 7 April, 1828, and stated most of the preceding facts, and prayed for an injunction to the further proceedings to enforce the execution of the judgment and for general relief. The grounds relied on by the

plaintiff for this purpose were first that his property is exempted from the levy by his discharge under the insolvent act; secondly, that he is entitled to credit for certain

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commissions accruing to him for certain business done for Zacharie since the judgment and agreed to be deducted therefrom, and thirdly, for the amount of losses sustained by the plaintiff in consequence of Zacharie & Turner's having caused certain attachments for the same debt to be issued in Louisiana against the property of the plaintiff in the hands of certain debtors of the plaintiff in that state. An injunction issued on the bill on the 8th of the same April.

The answer of the defendants (now appellees) having come in, the cause was set down for a hearing on the bill and answer (by which the facts stated in the answer must be taken to be true), and it was decreed by the court that the injunction be dissolved and the bill dismissed without costs. From that decree the present appeal has been taken to this Court.

The first point presented for argument, and indeed that which was the principal ground of the appeal, is as to the effect of the discharge under the insolvent act. This question is of course at rest so far as it is covered by the antecedent decisions made by this Court. The ultimate opinion delivered by MR. JUSTICE JOHNSON in the case of [*Ogden v. Saunders*](#), 12 Wheat. 213, [25 U. S. 358](#) , was concurred in and adopted by the three judges, who were in the minority upon the general question of the constitutionality of state insolvent laws so largely discussed in that case. It is proper to make this remark in order to remove an erroneous impression of the bar that it was his single opinion, and not of the three other judges who concurred in the judgment. So far, then, as decisions upon the subject of state insolvent laws have been made by this Court, they are to be deemed final and conclusive.

It has been suggested that the memorandum of agreement accompanying the judgment that it should be "subject to the legal operation of the insolvent laws of

Maryland," ought to be deemed an acquiescence on the part of Zacharie & Turner, in the validity of that discharge, or at least a waiver of any claim in repugnance to it. We do not think so. The sole effect of that agreement is to save to the party whatever rights he may claim from the legal operation of those laws. It neither admits their validity nor waives any rights of Zacharie & Turner, if they are unconstitutional.

It has in the next place been argued that the contract upon

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which the judgment is founded is, in contemplation of law, a Maryland contract, and not a Louisiana contract; that Boyle undertook to pay the money in the place where he resided, and not in the place where Zacharie & Turner resided. Our opinion is that this argument cannot be maintained. We do not admit that the original undertaking of Zacharie & Turner in giving security in behalf of Boyle, was an unauthorized act and beyond the scope of their just authority as consignees of the *Fabius*. It was an act obviously done for the benefit of Boyle, and indispensable to enable the vessel to perform her voyage, and naturally implied from the relation of the parties as owner and consignees. It must have been intended by the owner that the consignees were to be at liberty to do any act for his benefit which was or might be required in order to dispatch the vessel on the voyage. And Boyle himself seems to have admitted this to be true, for in the answer of Zacharie & Turner (which is evidence in the cause) it is expressly stated that Boyle,

"so far from disapproving of the acts of these defendants, as above stated, thanked them for their prompt and correct management of his business and undertook and promised to indemnify them from any loss which they might sustain on his account."

Now that could scarcely be deemed a prompt and correct management of the business of the principal, which was wholly beyond the scope of the authority delegated to the agents. In this view of the matter, the contract of indemnity would

clearly refer for its execution to Louisiana, as much so as if Boyle had authorized Zacharie & Turner to advance money there on his account, for which he would repay them. Such a contract would be understood by all parties to be a contract made in the place where the advance was to be made, and the payment, unless otherwise stipulated, would also be understood to be made there. The case would in this aspect fall directly within the authority of [Lanusse v. Barker](#), 3 Wheat. 101, [16 U. S. 146](#) ; see also *Coolidge v. Poor*, 15 Mass. 427; *Consequa v. Fanning*, 3 Johns.Ch. 587.

But if the contract had been unauthorized and beyond the agency, still the subsequent ratification of the transaction by Boyle would have the same operation according to the well known maxim that subsequent ratification is equivalent to a

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prior order, and when made, it has relation back to the time of the original transaction and gives it as full a sanction as if it had been done under an original authority. The ratification of this contract by Boyle was complete and perfect, and he treated it as a Louisiana contract of indemnity, for his benefit, by which he was bound, and which he ought to discharge in that state.

As to the credit for commissions, that is no longer relied on; for the defendant's answer asserts distinctly that the amount has been already credited.

As to the attachments, it is not very easy to ascertain the grounds upon which Boyle attempts in his bill to assert an equity. Assuming that a bill would lie to have an equitable offset for unliquidated damages, occasioned by the misconduct of the creditors in not prosecuting such attachments with due diligence, where the debt has been lost by the insolvency of the garnishee in the intermediate period (on which we desire to be understood as expressing no opinion), still there must be sufficient facts alleged in the bill to justify a presumption of loss. Now in the present bill there is no allegation whatsoever of any insolvency of the garnishees. The allegation as to one attachment is

"whereby your orator has been deprived of the benefit of any part of the debt, now due by the said Nelson [the garnishee], being somewhere about the sum of \$1,500, besides interest thereon, from the said year, when the attachment aforesaid was laid, and which sum is as completely lost to your orator, as if it had been paid over to the said Zacharie & Turner, who, for aught your orator knows, may have actually recovered the whole of it in virtue of said attachment, and may have refused to give credit for the same."

And as to the other attachment, the allegation is

"that they also attached property belonging to your orator, which was in the hands of Messrs Breedlove and Bradford [the garnishees], for which your orator has never received any credit, although it has been thus far completely lost to him, amounting, as he verily believes, to the sum of, &c.;"

So that the whole gravamen is that the attachments have hitherto prevented him from receiving the debts and interest due from the garnishees. Under such circumstances, where Boyle might at any time have relieved himself from the

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effects of the attachment by the payment of the debt due to Zacharie & Turner, and where he has himself acquiesced in the delay, without in any manner attempting to speed the suits, and where no connivance or indulgence is pretended to have existed in concert with the garnishees, and where there is no allegation in the bill itself of any undue delay in prosecuting the attachments by the creditor, it is difficult to perceive any foundation on which to rest a claim for equitable relief. But the answer of the defendants shows still more forcible objections against the bill. This answer explicitly avers that in both of the attachments, the garnishees denied having any funds of Boyle in their possession, Nelson generally and Breedlove, Bradford & Co. with the qualification, any funds liable to the attachment, and the suits were dismissed accordingly. Copies of the proceedings are annexed to the answer, which demonstrate (if it had been necessary) the result of the averment; but it must be taken to be true, as the

hearing was upon bill and answer.

It is added in the answer that the suit against Breedlove, Bradford & Co. was commenced upon the information and at the request of Boyle, so that it was not *in invitum*, but was an arrest of his funds upon his own suggestion and with his own consent. Surely a suit in chancery cannot be maintained in a case so naked of all real equity. But it is said that the answer of the garnishees, Breedlove, Bradford & Co., admits that they are indebted to the plaintiff. But we must take that answer according to its terms and import, and if so, then the admission is qualified. It is as follows:

"We do not consider ourselves in debt to Hugh Boyle or to Hugh Boyle & Co.; we received of Hugh Boyle & Co. some property, which has been sold, and the proceeds, say twelve or thirteen hundred dollars, placed to their credit on our books; but one of the house holds a claim against Hugh Boyle & Co. for upwards of twenty-five hundred dollars, which amount he refused to admit as a credit to our partner, but was willing to close Hugh Boyle & Co.'s account, by charging him and crediting the partner with the balance due said Boyle, and in this way said balance was held to pay the claim."

They add, in an answer to another interrogatory, "we have no property of the defendants in this case, nor do

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we know of any." Now it has not been shown at the argument that in a process of this sort, under the local laws of Louisiana, the debt due to one partner might not be a good defense for the garnishees, and certainly the court cannot presume it. And upon general principles there can be little doubt that in a court of equity in a suit by Boyle seeking relief, such a counterclaim would or might, under circumstances, furnish a good defense, if not to the firm, at least to the creditor partner, to rebut the claim of Boyle against him. Where there is an express denial by the garnishees setting up an equity of any property in their hands liable to the attachment, that allegation ought to be presumed to be supported by the local law

applicable to the facts until the contrary is explicitly established. But the decisive answer is that as this suit was commenced at the request of Boyle, and as the garnishees did not admit that they had property liable to the attachment, the onus is on Boyle to show that nevertheless, by the local law, the attachment might have been enforced. He has failed to establish any such proposition.

Upon the whole it is the opinion of the Court that the decree of the circuit court ought to be

Affirmed with 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 Maryland 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 with costs.

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