

United States Vs. Hack

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Court : US Supreme Court

Decided On : 1834

Appeal No. : 33 U.S. 271

Appellant : United States

Respondent : Hack

Judgement :

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United States v. Hack

33 U.S. (8 Pet.) 271

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MARYLAND

SYLLABUS

The priority of the United States does not extend so as to take the property of a partner from partnership effects to pay a separate debt, due by such partner to the United States, when the partnership effects are not sufficient to satisfy the

creditors of the partnership.

It is a rule too well settled to be now called in question that the interest of each partner in the partnership property is his share in the surplus after the partnership debts are paid, and that surplus only is liable for the separate debts of such partner.

The United States instituted an action of assumpsit against the defendants in the Circuit Court of the United States for the District of Maryland. The defendants pleaded *nonassumpsit*, and the case was submitted to the court by the counsel for the plaintiffs and the defendants on the following statement of facts agreed.

"It is agreed between the parties in this case by their counsel that John Stouffer is largely indebted to the plaintiffs on sundry judgments rendered against him on custom house bonds; that the said John Stouffer was, at the date of the said bonds and of the rendition of the said judgments, a partner in trade with his brother Jacob Stouffer, and so continued until the execution of the deed of trust hereinafter referred to; that the said John and Jacob Stouffer, becoming embarrassed and insolvent in their affairs, on 19 May, 1832, executed a deed of trust to and in favor of the defendants, of all their joint and partnership property for the benefit of their joint and partnership creditors, having no private or undivided estate; that the said property is not sufficient for the payment of all said creditors, but that the said John Stouffer's undivided half, now in the possession of the said trustees, amounts to \$974.71."

"It is also agreed that the amount of the unsatisfied judgments of the United States against the said John Stouffer is at

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this date, \$2,100 and upwards, after exhausting his private and individual estate. And the amount now in the possession of the aforesaid trustees, being the proceeds of the said partnership estate, is \$1,949.42, one-half of which is \$974.71."

"Upon the foregoing statement of facts, the district attorney contends that the plaintiffs are entitled to receive from the defendants the sum of \$974.71, being the proceeds of John Stouffer's undivided half of, in, and to the aforesaid partnership estate, to be applied to the satisfaction of the aforesaid judgments recovered against the said John Stouffer."

"The counsel for the defendants contends that the plaintiffs are not entitled to receive anything from the defendants in this action, on the ground that the money in their hands is the proceeds of partnership property, the whole of which is inadequate to the entire payment of the partnership debts, and that the plaintiffs are creditors of John Stouffer only, and not of the said partners. The question submitted to this Court is whether the plaintiffs are entitled to recover from the defendants in this case the said sum of \$974.71, being one-half of the aforesaid partnership estate. It is finally agreed that all errors in pleading be mutually released, and that either party shall have the privilege of prosecuting a writ of error to the Supreme Court of the United States."

The circuit court gave judgment for the defendants, and the United States prosecuted this writ of error.

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MR. JUSTICE THOMPSON delivered the opinion of the Court.

This cause comes up on a writ of error from the Circuit Court of the United States for the District of Maryland. The action in the circuit court was for the recovery of a sum of money which came into the hands of the defendants as

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assignees of John and Jacob Stouffer, who were partners in trade, and had become insolvent.

The material facts in the case, as agreed between the parties are that John Stouffer, one of the partners, is largely indebted to the United States on sundry

judgments rendered against him on custom house bonds. That at the date of said bonds and at the time of the rendition of the judgments, he was a partner in trade with Jacob Stouffer, and so continued until 19 May, 1832, when they became embarrassed and insolvent and executed a deed of trust to and in favor of the defendants for all their joint and partnership property, for the benefit of their joint and partnership creditors, they having no private or individual estate. The property then assigned is not sufficient to pay the partnership creditors, but the undivided half of John Stouffer, now in the possession of the defendants, amounts to \$974.71.

Upon this state of facts, the question submitted to the circuit court was whether the United States was entitled to recover from the defendants the sum of \$974.71, being John Stouffer's half of the proceeds of the partnership estate. Upon which the court gave judgment for the defendants.

It is claimed on the part of the plaintiffs in error that under the provisions of the acts of Congress, the United States, as judgment creditors of John Stouffer, are entitled to be first paid to the extent of his share of the property, assigned to the defendants in preference to the creditors of the partnership.

The Act of Congress, 3 vol. L.U.S. 197, sec. 65, declares

"That when any bond for the payment of duties shall not be satisfied on the day it becomes due, the collector shall forthwith cause a prosecution to be commenced, &c.; And in all cases of insolvency or where any estate, in the hands of the executors, administrators, or assignees shall be insufficient to pay all the debts due from the deceased, the debt or debts due from the United States on such bonds shall be first satisfied,"

&c.;

The construction of this clause of the act of Congress has frequently come under the consideration of this Court, although not under the circumstances in which it is now presented. It was held at an early day in the case of [*United States v.*](#)

Fisher, 2 Cranch 358, 1 Cond. 421, in the construction of a similar clause in the Act of 3 March, 1797, ch. 74, that no lien is created by this law. No *bona fide* transfer of property in the ordinary course of business is overreached.

And in a late case of [*Conard v. Atlantic Insurance Company*](#), 1 Pet. 439, this question received a very full examination, and explanation of some former decisions which seem not to have been fully understood, and in the course of which it is observed:

"What then is the nature of the privity thus limited and established in favor of the United States? Is it a right which supersedes and overrules the assignment of the debtor as to any property which the United States may afterwards elect to take in execution, so as to prevent such property from passing by virtue of such assignment to the assignee? Or is it a mere right of prior payment out of the general funds of the debtor in the hands of the assignee? We are of opinion that it clearly falls within the latter description."

If then the debt of the United States is not a lien, but only entitled to priority of payment out of the general funds of the debtor in the hands of the assignee, what are the funds out of which this priority is set up in the present case? They are not the funds of John Stouffer, the debtor of the United States, but of John and Jacob Stouffer, who have become insolvent, and having no separate property, and the partnership property is insufficient to satisfy the partnership creditors. It is a rule too well settled to be now called in question that the interest of each partner in the partnership property is his share in the surplus after the partnership debts are paid, and that surplus only, is liable for the separate debts of such partner. And this is the rule in the Exchequer in England with respect to debts due to the Crown. In the case of *King v. Sanderson*, 1 Wightwick's Ex. 50, it was held that upon an extent against one partner, the Crown, like a separate private creditor, took the separate interest of the partner, subject to the partnership debts.

It has been a question very much litigated in England and in this country both in the courts of law and equity as to the manner in which the separate creditor of one partner was to avail himself of the share of such partner in the joint property of the firm where the partnership is solvent. But whatever

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course is adopted, it is the interest only of the separate partner that is taken, and always subject to the rights of the partnership creditors; 16 Johns. 106, and cases in note; 2 Johns.Ch. 548; 4 Johns.Ch. 525; 2 Cond. 516. But that question does not arise here, as it is admitted that the partnership property is insufficient to pay the partnership debts. We entertain no doubt, therefore, that the United States are not entitled to recover the nine hundred and seventy-four dollars and seventy-one cents.

The judgment of the circuit court is accordingly

Affirmed.

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 adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed.

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