

Brent Vs. Bank of Washington

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Appellant : Brent

Respondent : Bank of Washington

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Brent v. Bank of Washington - 35 U.S. 596 (1836)

U.S. Supreme Court Brent v. Bank of Washington, 35 U.S. 10 Pet. 596 596 (1836)

Brent v. Bank of Washington

35 U.S. (10 Pet.) 596

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES

FOR THE COUNTY OF WASHINGTON IN THE DISTRICT OF COLUMBIA

SYLLABUS

Robert Brent was the holder of six hundred and fifty-nine shares of stock in the Bank of Washington, and was indebted to the bank as endorser on certain promissory notes, one of which became due after his death. He was also indebted

to the United States as paymaster, and he made an assignment of his property to satisfy the debt. The assignees did not accept the assignment. He died sometime afterwards. The bank, under the provision of their charter, which gives a lien on the stock held by a debtor for the payment of debts due to them before the transfer of the stock held by a stockholder, insisted on the lien against the claim of priority by the United States, and their claim was sustained by the court.

It has been the uniform construction of the fifth section of the act of 1797, 1 Story's Laws, 464, and of the similar provision in the sixty-fifth section of the collection act of 1799, 1 Story's Laws 630, that whether in a case of insolvency, death, or assignment, the property of the debtor passes to the assignee, executor, or administrator, the priority of the United States operating not to prevent the transmission of the property, but giving them a preference in payment out of the proceeds.

This preference is in the appropriation of the *debtor's estate*; so that if, before it has attached, the debtor has conveyed or mortgaged his property, or it has been transferred in the ordinary course of business, neither are overreached by the statutes; and it has never been decided that it affects any lien, general or specific, existing when the event took place, which gave the United States a claim of priority.

Another rule is settled by these cases -- that the priority does not attach to property legally transferred to a creditor on respondentia; though he may hold it subject to an account, equity or trust for the borrower. Such transfer will be protected against the United States, though not an out and out sale in the course of business, so as to divest the equitable as well as the legal interest of the party.

Every stockholder of a bank who draws or endorses a note to procure a loan from the bank is bound to know the terms of the charter and bylaws; his signature to the note is an inchoate pledge of his stock for security, if so provided in the charter; his stock gives credit to his name, and the bank grant the loan on its faith.

Robert Brent, a paymaster of the Army of the United States, having become indebted to the United States and being in an infirm state of health, on 17 May, 1819, executed an assignment stating the situation of his health and his earnest desire to satisfy and adjust the claim of the government against him as paymaster as aforesaid, and to do justice to others, and that the better to secure these objects

Page 35 U. S. 597

and purposes, the assignment proceeded in the following terms:

"I have conveyed and assigned, and do by these presents convey and assign, in consideration of the premises, and for the sum of one dollar to me in hand paid, to George Graham, Joseph Pearson and Robert Y. Brent, all my real and personal estate and property, in whatsoever consisting and wheresoever situated, to them, the said George Graham, Joseph Pearson and Robert Y. Brent, their executors and administrators, and to the survivor of them, nevertheless, for paying and satisfying all just claim or claims of the government as aforesaid, as well as for satisfying all just claim or claims of all others, as far forth as the said estate and property above conveyed will answer, with full power and authority to them or the majority of them to sell and convey, and to make good and sufficient titles to all or any part of the property referred to, in conformity with the intention and purpose of this writing, it being well understood that the said trustees, after satisfying the purposes of the said trust, shall well and fully account with the said Robert Brent, his heirs, executors, or administrators, for the execution of the trust aforesaid, and fully restore to the said Robert Brent, his heirs, executors, or administrators any overplus or surplusage that may remain of the estate aforesaid, and it being also understood that the said Robert Brent reserves to himself the possession and use of such part of the property aforesaid as may be for his reasonable support and maintenance, and likewise, the privilege of disposing of any part of the trust estate, with the consent of the trustees, for the objects designated above."

It was agreed that the assignees refused to accept the assignment or to act under it.

Robert Brent died on 7 September, 1819, leaving real and personal estate, and the executors qualified and took possession of his estate in 1820. At the time of his death, he held six hundred and fifty-nine shares of stock in the Bank of Washington, and at that time he was indebted to the bank, as endorser on two promissory notes, one for \$1,000 drawn by Thomas L. Washington and endorsed by Robert Brent, due and protested on 22 May, 1819; the other for \$667, also drawn by Mr. Washington and endorsed by Mr. Brent, due and protested on 29 May, 1819; he was also, at the time of his death, endorser of a promissory note drawn by John Cooke for \$400, which became due and was protested on 19 November,

Page 35 U. S. 598

1819, making, together with the other notes, the sum of \$2,067, of which \$1,667 only were due at his decease.

Some years after the death of Robert Brent, the Bank of Washington instituted a suit against the executors on the note of \$400, and on the note of \$667, and on a plea of the statute of limitations, a verdict and judgment were rendered for the defendants.

The eleventh section of the charter of the Bank of Washington provides that

"All debts actually due and payable to the bank (days of grace for payment being passed) by a stockholder requesting a transfer, must be satisfied before such transfer shall be made unless the president and directors shall direct to the contrary."

The same section of the charter also declares:

"That the shares of capital stock at any time owned by any individual stockholder shall be transferable only on the books of the bank according to such rules as may, conformably to law, be established in that behalf by the president and directors."

The certificates of stock issued by the bank declare that "the shares are to be transferred at the bank by the stockholder, or his attorney, on surrendering the certificate of the same." There is also a provision in the section which authorizes the directors to make regulations for the government and transactions of the bank "conformable to law."

The executors of Robert Brent, in the year 1820, called upon the Bank of Washington and requested to be allowed to transfer the stock held by their testator. This was refused, without the payment of the notes, the bank claiming the same under the provision of the charter, which, it was insisted, gives the bank a right to be so paid. In 1835, the bank had retained dividends on the stock, and had sold a part of it, amounting to \$289.80.

Bills were filed in the circuit court by the surviving executor of Robert Brent for the use of the United States against the Bank of Washington claiming a right to transfer the stock for the payment of the debt due to the United States on the allegation of the right of priority given to the United States by the acts of Congress. The Bank of Washington, at the same time, filed a bill claiming to appropriate the stock, by a sale of it, to the payment of the debt due to them, and asserting their right to a lien and to payment under the provisions of the charter.

The following agreement was made in the circuit court between the parties to these suits:

Page 35 U. S. 599

"It is agreed by and between the said parties that if the court shall be of opinion that the eleventh section of the charter of the Bank of Washington, as follows:"

" All debts actually due and payable to the bank (days of grace for payment being passed) by a stockholder requesting a transfer must be satisfied before such transfer shall be made, unless the president and directors shall direct to the contrary,"

"confers upon said bank a specific lien upon the stock held by any stockholder indebted to said bank, the days of grace being passed; then the court may decree that the stock, or a sufficient amount thereof, held by complainant's testate in said bank, shall be sold at public sale, upon such terms as the court may think proper to impose, and by such trustee as they may appoint, and may further direct that the proceeds thereof, after paying the expenses of the sale, and the costs of this suit, shall be applied to the payment of the notes hereinafter enumerated, and by this agreement admitted to be due and unpaid by the complainant's testate to the defendants, unless the court shall further be of opinion that said lien granted by said charter is overreached, controlled, and destroyed by the claims of the United States now made to a priority of payment out of said stock by virtue of the Act of Congress of 1799, ch. 128, sec. 65, as follows:"

" In all cases of insolvency or where any estate in the hands of executors, administrators and assigns shall be insufficient to pay all the debts due from the deceased, the debt or debts due to the United States shall be first satisfied."

"Or unless the court be further of opinion that the claims or debts or said notes due to said defendants and hereinafter particularly specified, upon two of which notes of said testate as hereinafter described, it is agreed suits were instituted by the defendants against the complainants on the common law side of this Court at the trial of which said suits, the complainants had solely and exclusively, upon the ground of the plea of limitations, a verdict in their favor were thereby extinguished, and the said lien in consequence of said limitations lost and destroyed, then the court to decree, if the claims of the United States to priority of judgment be allowed, that the proceeds of said sale be applied in payment of the debt due the United States, or unless they shall be of opinion that the said lien is not affected by any such priority, but has been destroyed by the said verdicts in favor of complainants, then the proceeds of such sale to be applied to the payment of the note upon which no such verdict was rendered in favor of complainants."

The circuit court, on 26 January, 1826, made the following decree in the two cases:

"These causes coming on to be heard upon the bill, answers, and exhibits, and the facts stated in the agreement entered into between the complainants and defendants, it is this 22 January in the year 1836, ordered and decreed by the court, that the stock of Robert Brent deceased, standing in his name, in the Bank of Washington, or so much thereof as may be necessary to satisfy the several notes in the said agreement specified, be sold at public vendue, on the credit of sixty or ninety days, the purchasers to give notes with good endorsers, as the trustee may approve, notice being first given of the day of sale in one of the city newspapers, and that J. Hellen be, and he is hereby appointed a trustee to make said sale, and after paying the expenses of sale and costs of suit to defendants, he shall apply the proceeds of the sale to the payment of all the notes of said Brent, enumerated in the above statement as due to said defendants, and it is further decreed that the balance of said stock shall be transferred to the United States by said defendants on the books of said bank."

The United States prosecuted this appeal.

Page 35 U. S. 610

Mr. Justice BALDWIN delivered the opinion of the Court.

Robert Brent, the testator, owned six hundred and fifty-nine shares of the capital stock of the Bank of Washington in this district which stood in his name on their books at the time of his death in September, 1819; when he was indebted to the bank \$1,667 as endorser of two notes drawn by J. L. Washington, one of which was protested on 19, the other on 22 May preceding, and due notice thereof given. He was also endorser of a note of John Cooke due said bank, payable on the 19th of November 1819, which was also duly protested, and notice thereof given. On the 17th of May 1819, he made an assignment of all his estate, real and personal, to

Page 35 U. S. 611

secure the United States, to whom he was indebted, and all other creditors, which was recorded the same day, but never was accepted by the trustees, and became inoperative.

In 1820, the complainants, as executors, administered on the estate, when they called on the bank to allow them to transfer the stock belonging to the estate, which was refused by the bank on the claim of a lien for the amount of the above notes, of which they demanded payment before they would permit a transfer thereof on their books. Suits were afterwards brought by the bank against the executors to recover the amount of the three notes, in one of which they obtained a verdict; on the two others, verdicts were obtained in favor of the executors on the plea of the act of limitations.

In 1827, the executors filed their bill on the equity side of the circuit court praying for a decree to transfer the stock discharged from any alleged lien of the bank for the debt due by the testator; on the ground that being a debtor to the United States to a large amount and his estate insufficient to pay his debts, the debt due to them ought to be first paid pursuant to the provisions of the fifth section of the act of 1797, 1 Story 464, 465, and that the debts claimed by the bank were barred by the act of limitations, and the verdict rendered for the defendants. These are the only questions in the case.

The act of Congress referred to is in these words:

"That where any revenue officer or other person hereafter, becoming indebted to the United States by bond or otherwise, shall become insolvent, or where the estate of any deceased debtor, in the hands of executors or administrators, shall be insufficient to pay all debts due from the deceased, the debt due to the United States shall be first satisfied."

It has been the uniform construction of this act, and the similar provision in the sixty-fifth section of the collection act of 1799, 1 Story 630, that whether in a case of insolvency, death, or assignment, the property of the debtor passes to the assignee, executor or administrator the priority of the United States operating not

to prevent the transmission of the property, but giving them a preference in payment out of the proceeds. [Conard v. Atlantic Insurance Company](#), 1 Pet. 439.

This preference is in the appropriation of the *debtor's estate*, so that if, before it has attached, the debtor has conveyed or mortgaged his property, or it has been transferred in the ordinary course of business, neither are overreached by the statutes, [26 U. S. 1](#) Pet. 440, and it has never been decided that it affects any lien, general or specific,

Page 35 U. S. 612

existing when the event took place which gave the United States a claim of priority. In the case of *Conard v. Atlantic Insurance Company*, above quoted, in [Conard v. Nicholl](#), 4 Pet. 291, and [Conard v. Pacific Insurance Company](#), 6 Pet. 262, [31 U. S. 279](#), this Court considered the effect of the priority of the United States, in cases where their debtor has taken up money on *respondentia* bonds, on an agreement that the bill of lading of the goods therein mentioned should be endorsed to the lenders as a collateral security for the loan; that the return cargo should be consigned to them on their account and risk, the bills of lading to be so expressed, endorsed in blank and delivered to them, and the property be delivered to the order of the shippers, as a continuation of the collateral security. This was held, in all these cases, to amount to a transfer of the absolute legal right to the property composing the return cargo, to the holders of the bonds, so as to enable them to recover their value from the marshal, who had levied on them by virtue of an execution at the suit of the United States, and detained them after a demand of delivery. They recovered damages commensurate with their legal right of property, and the court would not inquire whether, in any event, the lenders on *respondentia* could be considered as trustees for the borrower, his creditors or assigns, deeming it immaterial. [31 U. S. 6](#) Pet. 272.

Another rule is settled by these cases -- that the priority does not attach to property legally transferred to a creditor on *respondentia*, though he may hold it subject to an account, equity, or trust for the borrower. Such transfer will be protected against the United States, though not an out and out sale in the course

of business, so as to divest the equitable as well as the legal interest of the party. Such a transaction approximates to one which merely gives a lien; its object is security, not a sale; it is in law a sale by the shape of the contract and securities, but if the goods were of greater value than the debt due, equity would compel an account for the surplus, considering the whole transaction to have been one of loan and priority merely. On the other hand, if the borrower, his creditor or assignee should come into equity to ask such account, it would be decreed to him only after the payment of the debt due; the holder of the security would be allowed to retain it for such purpose, however defective it might be at law. Nor would a court of equity take from the lender any legal right, which he might have to the possession of the

Page 35 U. S. 613

property, or to prevent its transfer to another, whereby such right would be impaired if his conduct had been *bona fide*.

Whatever may be the defects in the rights of a *bona fide* creditor at law, equity will protect him in their enjoyment till they are lost at law; if his conscience is not so affected as to bring him within the jurisdiction of a court of conscience, which does not administer legal remedies for legal rights. Its action is on equitable rights, by equitable remedies, or legal rights for which the law provides no remedy, [28 U. S. 3](#) Pet. 447, or none so adequate as equity, so beneficial or complete. [22 U. S. 9](#) Wheat. 845. This is a case of that description, or the plaintiffs have no standing in equity, for if they have a complete legal right to priority of payment out of the stock of Mr. Brent, and a remedy to enforce it, plain, adequate, and complete at law, the sixteenth section of the Judiciary Act, 1 Story 59, is a proviso on the jurisdiction of a court of equity, and it is not a case in equity under the third article of the Constitution.

In the bill of the complainants, they do not contest the lien of the bank by any paramount right in themselves as executors; they are the mere conduits through whom the United States claim the benefit of the legal priority given them by law, which the executors are compelled to assert in order to save themselves from the

consequences of their paying any other debt than that due to the United States before it is satisfied, as prescribed by the sixty-fifth section of the collection act.

If Mr. Brent was such a debtor as is contemplated by the law, and died without property sufficient to pay his debts, the right to satisfaction out of his estate, in preference to any other creditors, is undoubtedly in the United States. The record does not contain any evidence of insolvency, but as the case has been argued on the assumption that it existed, and that Mr. Brent was a debtor within the purview of the law, the court will so consider him and his estate. Assuming, then, the right of the United States as respects the executors, and all his creditors, except the bank, to priority of payment, to be complete; we find them, through the executors, plaintiffs in equity, claiming a decree for the transfer of the stock of the testator standing on the books of the bank, in order to have it sold for the exclusive payment of their debt. A court of law cannot do this, for by the eleventh section of the bank charter, the stock is transferable only on the books of the bank, according to such rules as may, conformably to law, be established in that behalf by the president and

Page 35 U. S. 614

directors. Davis' Laws Dist. of Col. 224. On a similar provision in the charter of the Union Bank of Georgetown, this Court, in the [*Union Bank v. Laird*](#), declared that "no person could acquire a legal title to any shares, except under a regular transfer, according to the rules of the bank." The executors cannot sustain a suit at law in their own right for refusing to permit such transfer, inasmuch as, by another clause of the same article in the charter, it is provided:

"But all debts actually due and payable to the bank (days of grace for payment being past) by a stockholder requesting a transfer must be satisfied before such transfer shall be made, unless the president and directors shall direct to the contrary."

As Mr. Brent owed the debts now claimed by the bank on the notes due and protested before his death, this would be a complete answer to a suit at law by his

executors for not permitting a transfer, and the same objection would be fatal to a suit in their name for the use of the United States. The defense is a legal one: the case provided for by the charter and by law had happened; the bank had a perfect right to hold on to the stock, and this Court has decided in the case of *Laird* that a rule of the bank imposing such a restriction on the transfer of stock is conformable to law. [15 U. S. 2](#) Wheat. 392-393.

The United States has no pretense of a legal right to a transfer of the stock to themselves, or to recover damages for refusing it; the right to hold the stock devolves on the executors, to whose hands it must come for sale and distribution; the proceeds, not the stock, go to the United States in virtue of their priority; such are the words of the law -- "the estate of any deceased debtor in the hands of executors or administrators." Thus compelled to come into equity for a remedy to enforce a legal right, the United States must come as other suitors, seeking in the administration of the law of equity, relief, to give which courts of law are wholly incompetent on account of the legal bar interposed by the bank. This Court, in [United States v. Mitchell](#), 9 Pet. 743, have recognized the principle in the common law that though the law gives the king a better or more convenient remedy, he has no better right in court than the subject through whom the property claimed comes to his hands. 2 Co.Inst. 573; 2 Ves.Sr. 296, 297; Hard. 60, 460. This principle is also carried into all the statutes, by which the appropriate courts are authorized to decide, and under which they do decide on the rights of a subject in a controversy with the King, according to equity and good conscience between subject and subject. 7 Co. 19; 6 Hard. 27, 170, 230, 502; 4 Co.Inst. 190.

Page 35 U. S. 615

It is not difficult in this case to decide what the rules of equity and good conscience require. The bank has lent its money on the name, credit, and stock of Mr. Brent, before the United States could have any claim of preference. Two notes were due, protested, and the legal lien of the bank for their payment complete; as to the third, the time for repayment had not arrived before such right attached on the property of Mr. Brent in the hands of his executors, but it was confined to what belonged to

and was part of the assets of the estate. The right was a legal one; the claim of the United States was a statutory one, but its existence was not founded on any bad faith of the bank, its conscience was unaffected, and by law they held the legal control of the transfer of their stock; their consent was necessary to the transmission of the legal title to the executors, and the only ground on which the aid of a court of equity is asked to compel them to give their consent is a legal claim to the proceeds by a right which will deprive the bank of all security for their debt. In good conscience, there can be no claim more equitable than that of the bank for money lent, and if the law has placed them on the *tabula in naufragio*, it little comports with the principles of equity to take it from them merely because, by the death of Mr. Brent before the protest of the third note, the legal lien, secured by their charter, had not become consummated, before the legal right of the United States had attached to priority of payment out of his estate. An individual asserting such a claim in equity against the bank, in virtue of an act of bankruptcy, an execution or assignment, between the date and the protest of the note, would be compelled to do equity before he could enforce his legal right, and we can perceive no reason why the United States should be exempted from this fundamental rule of equity, subject to which, its courts administer their remedy.

Every stockholder who draws or endorses a note to procure a loan from the bank, is bound to know the terms of the charter and bylaws; his signature to the note is an inchoate pledge of his stock for security; his stock gives credit to his name, and the bank grants the loan on its faith.

Though the charter has not made the note a lien on the stock till the note is protested, so as to give the bank both a legal and equitable right to refuse the transfer till it is paid; yet it has given them the power to prevent a transfer unless on their books, by such rules as they may prescribe, which gives them power to prevent the legal

Page 35 U. S. 616

title from passing to a purchaser. Connecting this with the power to make bylaws for the government of the bank and the management of their concerns, the bank

would have a strong case in equity, had the latter clause in the eleventh section of their charter been omitted.

Under the usual clause in the charter to the Hudson Bay Company to make bylaws, &c., they had made one respecting the transfer of their stock, so that it should be first liable for debts due to the company by their own members, or to answer the calls of the company on their stock. One of the stockholders, indebted to the company for money received for their use, became bankrupt; his assignees brought a bill to compel a transfer of his stock, which was opposed by the company in virtue of their bylaws. The chancellor declared

"the bylaw a good one, for the legal interest of all the stock is in the company, who is trustee for the several members and may order that the dividends to be made, shall be under particular restrictions or terms, and by the same reason that this bylaw is objected to, the common bylaws of companies, to deduct the calls out of the stocks of the members refusing to pay their calls, may be said to be void."

Child v. Hudson Bay Co., 2 P.W. 207, 209; S.P. 1 Str. 645; 1 Eq.Cas.Ab. 9, pl. 8; 13 Ves. 428, 429.

In *Waln's Assignees v. Bank of North America*, it was held by the Supreme Court of Pennsylvania that when, by the known usage of a bank, the stock of a debtor was not transferable till the debt was paid, such usage was binding on his assignees, the bank having, by its charter, power to make bylaws and having made one requiring all transfers to be made on its books in the presence of its officers. 8 S. & R. 73, 86. In giving such power by charter and executing it by such a bylaw, the intention of the law of incorporation is most evidently to give a security to the bank; by permitting a transfer and giving a certificate to the holder, the bank gives up all claims on the stock; the legal right to supervise the transfer was intended for its benefit. On this principle, this Court said

"No person therefore can acquire a legal title to any shares except under a regular transfer according to the rules of the bank, and if any person takes an equitable assignment, it must be subject to the rights of the bank under the act of

incorporation, of which he is bound to take notice."

[15 U. S. 2](#) Wheat. 393.

The principle of these cases covers the present in all its bearings. It is admitted that the bank has a legal right to withhold the

Page 35 U. S. 617

transfer till payment of the notes protested in the lifetime of Mr. Brent; the case is equally clear in equity as to the note endorsed by him and discounted by the bank, though not protested till after his death.

A commission of bankruptcy relates to the act of bankruptcy, having the effect of an execution; it prevents the transmission of the bankrupt's property from that time to any but his assignees; the same effect follows a voluntary assignment -- both operate to transfer the property itself, whereas the priority of the United States attaches only after the transfer is made by the party, or by operation of law at his death. If, then, the lien of a corporation attaches to an actual transfer of the stock, so as to make it subject to all their equitable demands upon it, *a fortiori* it must remain on it when a preferred creditor can claim payment only out of the proceeds in the hands of the assignees, or personal representatives of the debtor.

So long, then, as this note remains due and unpaid, the complainants are not entitled to a transfer of the stock owned by their testator.

But they allege that the debt is extinguished by the verdict in their favor rendered on a plea of the statute of limitations.

In [Bank of the United States v. Donnelly](#), 8 Pet. 361, this Court laid it down as an established principle that the act of limitations operated only to bar the remedy, not to extinguish the right or cause of action, and that a judgment on a plea of the statute was only to bar the remedy on a contract when sued for in Virginia, as the limitation act of that state embraced the one declared on, but did not operate to extinguish the contract when sued for elsewhere or in Kentucky, where, by the *lex loci*, it was not affected by any limitation. *Id.* [33 U. S. 370](#) .

We cannot take this case out of this established rule; the legal remedy is barred, but the debt remains as an unextinguished right, and the bank, when called into a court of equity, may hold to any equitable lien or other means in their hands till it is discharged.

The decree of the circuit court is 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 Columbia holden in and for the County of Washington, and was argued by counsel, on consideration whereof it is decreed and ordered 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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