Mcelmoyle Vs. Cohen

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Appellant : Mcelmoyle

Respondent : Cohen

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McElmoyle v. Cohen

38 U.S. (13 Pet.) 312

ON CERTIFICATE OF DIVISION BETWEEN THE JUDGES OF THE SIXTH

CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF GEORGIA

SYLLABUS

Although a judgment in the court of a state is not to be regarded in the courts of her sister states as a foreign judgment, or as merely *prima facie* evidence of a debt to sustain an action of debt upon the judgment, it is to be considered only

distinguishable from a foreign judgment in this, that by the first section of the Fourth Article of the Constitution, and by the Act of May 26, 1790, sec. 1, the judgment is conclusive on the merits, to which full faith and credit shall be given when authenticated as the act of Congress has prescribed.

When the Constitution declares that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state, and provides that Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof, the latter clause, as it relates to judgments, was intended to provide the means of giving to them the conclusiveness of judgments upon the merits, when it is sought to carry them into judgments by suits in the tribunals of another state. The authenticity of the judgment, and its effect, depend upon the law made in pursuance of the Constitution; the faith and credit due to it as the judicial proceeding of a state is given by the Constitution, independently of all legislation.

By the law of Congress of May 26, 1790, the judgment is made a debt of record, not examinable upon its merits, but it does not carry with it into another state, the efficacy of the judgment upon property, or upon persons to be enforced by execution. To give it the force of a judgment in another state, it must be made a judgment there, and can only be executed in the latter as its laws may permit.

The plea of the statute of limitations, in an action instituted in one state on a judgment obtained in another state, is a plea to the remedy, and consequently, the *lex fori* must prevail in such a suit.

Prescription is a thing of policy growing out of the experience of its necessity, and the time after which suits or actions shall be barred, has been from a remote antiquity fixed by every nation, in virtue of that sovereignty by which it exercises its legislation for all persons and property within its jurisdiction.

There is no constitutional inhibition on the states, nor any clause in the Constitution from which it can be even plausibly inferred that the states may not legislate upon the remedy on suits on the judgments of other states, exclusive of

all interference with their merits.

A suit in a state of the United States on a judgment obtained in the courts of another state, must be brought within the period prescribed by the local law, the *lex fori,* or the suit will be barred. The statute of limitations of Georgia can be pleaded to an action in that state, founded upon a judgment rendered in the state court of the State of South Carolina.

In the payment of the debts of a testator or intestate in Georgia, the judgment of another state, whatever may have been the subject matter of the suit, cannot be put upon the footing of judgments rendered in the state, and it can only rank as a simple contract debt in the appropriation of the assets of the estate of a deceased person to the payment of debts.

William McElmoyle, a citizen of the State of South Carolina, suing for the use of Isaac S. Bailey, also a citizen of that state, presented a petition in 1835 to the Circuit Court of the United States, for the District of Georgia, stating that Levy Florence had died intestate, and having before his death resided in the State of South Carolina, he had obtained a judgment against him in the Court of Common Pleas for the City of Charleston, for $968.07, on a promissory note, on 16 February, 1822, which remains

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unsatisfied; an exemplification of which judgment in due form was exhibited to the court with the petition.

The defendant, a citizen of Georgia, to which state Levy Florence removed after seven years from the rendition of the judgment, and in which state he resided at the time of his death, pleaded the statute of limitation of the State of Georgia, which the plea alleges limits such actions to five years from the cause of action, and he afterwards pleaded that there is no statute of the State of South Carolina which limits suits upon judgments therein to any particular time, nor is there any statute of limitations in that state applicable to judgments, but that a statute was passes by the Legislature of Georgia, on 7 December, 1805, which provides and

declares that all actions of debt on judgment obtained in courts other than the courts of Georgia, shall be commenced and prosecuted within five years from the rendition of such judgment, and not afterwards, and that for seven years after the rendition of the judgment on which the suit is brought, Levy Florence was a resident and citizen of the State of Georgia, and on suit on the judgment was commenced against him, nor for two years after the defendant, John J. Cohen, had been the duly qualified administrator of the said Levy Florence. The defendant for further plea states that he has not funds of the estate of Levy Florence sufficient to pay the whole of the judgment and to pay the other debts claimed as due from the estate.

Upon the trial of the cause the following questions occurred, upon which the opinions of the judges were opposed, and the same were certified to the supreme court.

1st. Whether the statute of limitations of Georgia can be pleaded to an action in that state, founded upon a judgment rendered in the State of South Carolina?

2d. Whether in the administration of assets in Georgia, a judgment rendered in South Carolina, upon a promissory note, against the intestate when in life, should be paid in preference to simple contract debts?

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MR. JUSTICE Wayne delivered the opinion of the Court.

This cause has been brought to this Court, upon a certificate of division of opinion between the judges of the sixth circuit court, upon the following points.

1. Whether the statute of limitations of Georgia can be pleaded to an action in that state, founded upon a judgment rendered in the State of South Carolina?

2. Whether, in the administration of assets in Georgia, a judgment rendered in South Carolina, upon a promissory note against the intestate, when in life, should be paid in preference to simple contract debts?

Upon neither of these points does the court entertain a doubt.

Upon the first of them, we observe, though a judgment obtained in the court of a state is not to be regarded in the courts of her sister states as a foreign judgment, or as merely *prima facie* evidence of a debt to sustain an action upon the judgment, it is to be considered only distinguishable from a foreign judgment in this that by the first section of the fourth article of the Constitution, and by the Act of May 26, 1790, section 1, the judgment is a record, conclusive upon the merits, to which full faith and credit shall be given, when authenticated as the act of Congress has prescribed. It must be obvious, when the Constitution declared that full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state, and provides that Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof, that the latter clause, as it relates to judgments, was intended to provide the means of giving to them the conclusiveness of judgments upon the merits, when it is sought to carry them into judgments by suits in the tribunals of another state. The authenticity of a judgment and its effect, depend upon the law made in pursuance

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of the Constitution; the faith and credit due to it as the judicial proceeding of a state, is given by the Constitution, independently of all legislation. By the law of 26 May, 1790, the judgment is made a debt of record, not examinable upon its merits, but it does not carry with it into another state the efficacy of a judgment upon property or persons, to be enforced by execution. To give it the force of a judgment in another state, it must be made a judgment there, and can only be executed in the latter as its laws may permit. It must be conceded that the judgment of a state court cannot be enforced out of the state by an execution issued within it. This concession admits the conclusion that under the first section of the Fourth Article of the Constitution, judgments out of the state in which they are rendered, are only evidence in a sister state that the subject matter of the suit has become a debt of record, which cannot be avoided but by the plea of *nul tiel* record. But we need not doubt what the framers of the Constitution intended to

accomplish by that section, if we reflect how unsettled the doctrine was upon the effect of foreign judgments, or the effect, *rei judicatae,* throughout Europe, in England, and in these states, when our first Confederation was formed. On the Continent it was then and continues to be a vexed question, determined by each nation, according to its estimate of the weight of authority to which different civilians and writers upon the laws of nations are entitled. In England, it was an open question, having on both sides her eminent equity, common law, and ecclesiastical jurists. It may still be considered, in England, a controverted question so far as jurists and elementary writers on the common law are concerned; though the adjudications of the English courts have now established the rule to be, that foreign judgments are *prima facie* evidence of the right and matter they purport to decide.

In these states, when colonies, the same uncertainty existed. When our revolution began and independence was declared and the Confederation was being formed, it was seen by the wise men of that day that the powers necessary to be given to the confederacy, and the rights to be given to the citizens of each state in all the states, would produce such intimate relations between the states and persons that the former would no longer be foreign to each other in the sense that they had been, as dependent provinces, and that for the prosecution of rights in courts, it was proper to put an end to the uncertainty upon the subject of the effect of judgments obtained in the different states. Accordingly, in the Articles of Confederation there was this clause:

"Full faith and credit shall be given in each of these states to the records, acts, and judicial proceedings of the courts and magistrates of every other state."

Now though this does not declare what was to be the effect of a judgment obtained in one state in another state, what was meant by the clause may be considered as conclusively determined, almost by contemporaneous exposition. For when the present Constitution was formed, we find the same clause introduced into it with but a slight

variation, making it more comprehensive and adding, "Congress may, by general laws, prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof," thus providing in the Constitution for the deficiency which experience had shown to be in the provision of the Confederation, as the Congress under it could not legislate upon what should be the effect of a judgment obtained in one state in the other states. Whatever difference of opinion there may have been as to the interpretation of this article of the Constitution in another respect, there has been none as to the power of Congress under it to declare what shall be the effect of a judgment of a state court in another state of the Union. Here again we have contemporaneous legislative interpretation of the first section of the Fourth Article of the Constitution, for by the Act of 1790, May 26, it was declared,

"That the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from whence the said records are or shall be taken."

What faith and credit, then, is given in the states to the judgments of their courts? They are record evidence of a debt, or judgments of record, to be contested only in such way as judgments of record may be, and consequently are conclusive upon the defendant in every state except for such causes as would be sufficient to set aside the judgment in the courts of the state in which it was rendered. In other words, as has been said by a commentator upon the Constitution,

"If a judgment is conclusive in the state where it is pronounced, it is equally conclusive everywhere in the states of the Union. If reexaminable there, it is open to the same inquiries in every other state."

Story's Com. 183. It is therefore put upon the footing of a domestic judgment, by which is meant not having the operation and force of a domestic judgment beyond the jurisdiction declaring it to be a judgment, but a domestic judgment as to the merits of the claim or subject matter of the suit. When, therefore, this Court said, in *Mills v. Duryee,* 7 Cranch 481,

"If it be a record conclusive between the parties, it cannot be denied but by the plea of *nul tiel record* this language does not admit of the interpretation that a plea not denying the judgment, but which resists it upon the ground of a release, payment, or a presumption of payment, from the lapse of time, whether such presumption be raised by the common law prescription, or by a statute of limitation, may not be pleaded, any more than where this Court, in *Hampton v. McConnell,* 3 Wheat. 234, says:"

"The judgment of a state court should have the same credit, validity, and effect in every other court of the United States which it had in the state court where it was pronounced, and that whatever pleas would be good to a suit thereon in such state, and none others, could be pleaded in any court in the United States,"

is intended to exclude such defenses as have just been stated, or such as inquire into the jurisdiction of the court in which the judgment was given, to pronounce it as the right of the

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state itself to exercise authority over the persons or the subject matter. It has been well said,

"The Constitution did not mean to confer a new power of jurisdiction, but simply to regulate the effect of the acknowledged jurisdiction over persons and things within the state."

Story's Com. 183.

Such being the faith, credit, and effect to be given to a judgment of one state in another by the Constitution and the act of Congress, the point under consideration will be determined by settling what is the nature of a plea of the statute of limitations. Is it a plea that settles the right of a party on a contract or judgment, or one that bars the remedy? Whatever diversity of opinion there may be among jurists upon this point, we think it well settled to be a plea to the remedy, and consequently that the *lex fori* must prevail. *Higgins v. Scott,* 2 Barn. & Ad. 413. 4

Cowen 528, note 10. *Id.,* 503. *Van Ramsdyk v. Kane,* 1 Gallis 371. *Le Roy v. Crowninshield,* 2 Mason 351. *British Linen Com. v. Drummond,* 10 Bar. & Cres. 903. *De La Vega v. Veanna,* 1 Barn. & Ad. 284. *De Couche v. Savalier,* 3 Johns.Ch. 190. *Lincoln v. Battalle,* 6 Wend. 475. *Gulick v. Lodes,* Green's N.J. 68. 3 Burge's Com. on Col. & For. Laws 883. The statute of Georgia is

"that actions of debt on judgments obtained in courts other than the courts of this state must be brought within five years after the judgment obtained."

It would be strange if in the now well understood rights of nations to organize their judicial tribunals according to their notions of policy, it should be conceded to them in every other respect than that of prescribing the time within which suits shall be litigated in their courts. Prescription is a thing of policy growing out of the experience of its necessity, and the time after which suits or actions shall be barred has been from a remote antiquity fixed by every nation in virtue of that sovereignty by which it exercises its legislation for all persons and property within its jurisdiction. This being the foundation of the right to pass statutes of prescription or limitation, may not our states, under our system, exercise this right in virtue of their sovereignty?, or is it to be conceded to them in every other particular than that of barring the remedy upon judgments of other states by the lapse of time? The states use this right upon judgments rendered in their own courts, and the common law raises the presumption of the payment of a judgment after the lapse of twenty years. May they not then limit the time for remedies upon the judgments of other states, and alter the common law by statute, fixing a less or larger time for such presumption, and altogether barring suits upon such judgments if they shall not be brought within the time stated in the statute? It certainly will not be contended that judgment creditors of other states shall be put upon a better footing in regard to a state's right to legislate in this particular than the judgment creditors of the state in which the judgment was obtained. And if this right so exists, may it not be exercised by a state's restraining the remedy upon the

judgment of another state, leaving those of its own courts unaffected by a statute of limitations, but subject to the common law presumption of payment after the lapse of twenty years. In other words, may not the law of a state fix different times for barring the remedy in a suit upon a judgment of another state, and for those of its own tribunals? We use this mode of argument to show the unreasonableness of a contrary doctrine. But the point might have been shortly dismissed with this sage declaration, that there is no direct constitutional inhibition upon the states, nor any clause in the Constitution from which it can be even plausibly inferred, that the states may not legislate upon the remedy in suits upon the judgments of other states, exclusive of all interference with their merits. It being settled that the statute of limitations may bar recoveries upon foreign judgments; that the effect intended to be given under our Constitution to judgments is that they are conclusive only as regards the merits; the common law principle then applies to suits upon them that they must be brought within the period prescribed by the local law, the *lex fori,* or the suit will be barred.

Counsel have relied, to establish a contrary doctrine, upon *Marlow v. Naylor,* Hill's South Carolina 439. But that case was obviously decided upon a misconception of the learned judges of the decision of this Court in the case of *Mills v. Duryee,* 7 Cranch 481.

It is therefore our opinion that the statute of limitations of Georgia can be pleaded to an action in that state founded upon a judgment rendered in the State of South Carolina.

The second question upon which the judges were divided in this case is whether a judgment rendered in South Carolina upon a promissory note against the intestate when in life should be paid in preference to simple contract debts. The law of Georgia provides that all debts of an equal degree shall be discharged in equal proportions as far as the assets of an intestate will extend, and that no preference shall be given amongst creditors in equal degree. Prince's Laws of Georgia 152, sec. 8. And the order prescribed for the payment of debts of any testator or intestate by executors and administrators is

"debts due by the deceased as executor, administrator, or guardian; funeral and other expenses of the last sickness; charges of probate and will, or of the letters of administration; next, debts due to the public; next, judgments, mortgages, and executions, the eldest first; next, rent; then, bonds or other obligations; and lastly debts due on open account, but no preference whatever shall be given to creditors in equal degree where there is deficiency in assets except in cases of judgments, mortgages that shall be recorded, from the time of recording, and executions lodged in the sheriff's office, the eldest of which shall be first paid, or in those cases where a creditor may have a lien on any part of the estate."

We first remark upon this question that it was decided some years since (as is reported to us by the present district judge) in the Circuit Court of the United States for the District of Georgia,

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the question being "whether judgments obtained in other states take precedence of simple contract debts," that in the administration of insolvent estates in Georgia, such judgments take no precedence. *Case of Ten Eyck v. Ten Eyck.* We believe, from inquiry, for we have no published decision in point, from the courts of Georgia that the judges of her superior courts hold the same opinion. In *Cameron v. Admrs. of Wurtz,* 4 McCord 278, it is decided that in marshaling the assets of an insolvent estate, a judgment recovered in another state only ranks as a simple contract. The decision is correctly placed upon the footing that the first section of the Fourth Article of the Constitution has effected no change in the nature of a judgment. It only provides that as matter of evidence, it shall be entitled to full faith and credit. But if the decisions in the cases of *Ten Eyck v. Ten Eyck* and *Cameron v. Wurtz* had not been as they are, and the point was now before us as an original question, we would come to the same conclusion. The Legislature of Georgia does not certainly, in terms, put judgments of other states, in the payment of decedent's debts, upon the footing of judgments of her own courts. The term "judgments" is used, and no preference can be given to creditors in equal degree. If, however, equality in the degree of judgment creditorship is qualified by seniority, and if, of executions lodged in the sheriff's office, the eldest is to be the first

satisfied, the law of Georgia gives the order in which judgments shall be paid. That order depends upon date, execution, and the execution having been lodged in the sheriff's office. In case of conflict then between judgments or executions, it is to be decided by record evidence to be obtained from the courts in the state, and so far as a right of seniority can be given by the execution's being lodged in the sheriff's office, the judgment of another state can never have this privilege. It can have no right to an execution in Georgia, and any execution issued upon it is in the state in which it was rendered. No one will contend that it could be placed with the sheriff, to be enforced, or to be put in competition with those issued upon domestic judgments.

Here, then, is a case in which the judgment of another state would be excluded by the terms of the law, which we think indicates the intention of the legislature not to place such a judgment upon the footing of domestic judgments in the administration of assets. But a more conclusive reason against any such extension occurs to us. By the law of Georgia, all the property of the defendant is bound from the signing of the first judgment; all judgment obtained at the same term of the court bearing equal date, if they are entered and signed in the clerk's office at any time within four days after the adjournment of the court. Prince's Dig. 211. If, then, the judgment of another state is to be brought in upon the footing of a domestic judgment in the administration of the assets of testators and intestates, then this consequence may ensue that a judgment of another state, having no lien upon property, may take preference by the death of a defendant over domestic judgments, having the first lien during his life, because the law says the eldest

judgment must be first satisfied. Such a right, and exclusion of right, could never have been intended by the Legislature of Georgia to be conferred by the death of an individual. It is not necessary to pursue this inquiry further. We therefore think, in the payment of debts of a testator or intestate, in Georgia, that the judgment of another state, whatever may be the subject matter of the suit, cannot be put upon the footing of judgments rendered in that state, and that it can only rank for that purpose as a simple contract debt.

As to the wish intimated by counsel in the conclusion of his reply that this Court would express its opinion whether the statute limiting the time within which suits are to be brought upon the judgments of another state is in force, we cannot comply with it, as it is a question not comprehended in the division of opinion certified to this Court.

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 Georgia, and on the points and questions on which the judges of the said circuit court were opposed in opinion, and which were certified to this Court for its opinion agreeably to the act of Congress in such cases made and provided, and was argued by counsel. On consideration whereof it is the opinion of this Court first that the statute of limitations of Georgia can be pleaded to an action in that state, founded upon a judgment rendered in the State of South Carolina, and secondly that in the administration of assets in Georgia, a judgment rendered in South Carolina upon a promissory note against the intestate when in life should not be paid in preference to simple contract debts Whereupon it is ordered and adjudged by this Court that it be so certified to the said circuit court.