Suydam Vs. Broadnax

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Appeal No. : 39 U.S. 67

Appellant : Suydam

Respondent : Broadnax

Judgement :

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U.S. Supreme Court Suydam v. Broadnax, 39 U.S. 14 Pet. 67 67 (1840)

Suydam v. Broadnax

39 U.S. (14 Pet.) 67

ON CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT OF

THE UNITED STATES OF THE SOUTHERN DISTRICT OF ALABAMA

SYLLABUS

The plaintiffs, merchants of New York, instituted a suit in the Circuit Court of Alabama against the administrators of the drawer of a note, dated in New York and payable in New York. The act of the Assembly of Alabama provides that the

estate of a deceased person which is declared to be insolvent shall be distributed by the executors or administrators according to the provisions of the statute, among the creditors and that no suit or action shall be commenced or sustained against any executor or administrator after the estate of the deceased has been represented as insolvent except in certain cases not of the description of that on which this suit was instituted. *Held* that the insolvency of the estate, judicially declared under the statute of Alabama, is not sufficient in law to abate a suit instituted in the circuit court of the United States by a citizen of another state against the representatives of a citizen of Alabama.

The exceptions in the sixth section of the law of Alabama in favor of debts contracted out of the state prevent the application of the statute or its operation in a case of a debt originating in and contracted by the deceased out of the State of Alabama.

A sovereign state, and one of the states of this Union, if the latter were not restrained by constitutional prohibitions, might, in virtue of sovereignty, act upon the contracts of its citizens, wherever made, and discharge them, by denying the right of action upon them in its own courts, but the validity of such contracts as were made out of the sovereignty or state would exist and continue everywhere else, according to the *lex loci contractus.*

The constitutional and legal rights of a citizen of the United States to sue in the circuit courts of the United States do not permit an act of insolvency, completely executed under the authority of a state, to be a good bar against a recovery upon a contract made in another state.

The eleventh section of the act to establish the judicial courts of the United States carries out the constitutional right of a citizen of one state to sue a citizen of another state in the circuit courts of the United States, and gives to the circuit courts "original cognizance, concurrent with the courts of the several states, of all suits of a civil nature at common law and in equity."

It was certainly intended to give to suitors, having a right to sue in

the circuit court, remedies coextensive with that right. These remedies would not be so if any proceedings under an act of state legislation to which the plaintiff was not a party, exempting a person of such state from suit, could be pleaded to abate a suit in the circuit court.

An action was instituted in the Circuit Court of Alabama by Henry A. Suydam and William Boyd against the defendants as administrators of David Newton on a promissory note given by him to the plaintiffs.

On the trial of the cause, the following questions arose on which the judges of the circuit court were divided, and the same were certified to this Court.

1st. Is the plea that the estate of the said decedent is insolvent sufficient in law to abate the said action?

2d. If the said plea be sufficient in law to abate said action, can the circuit court of the United States for the district aforesaid refer said cause for adjudication and final settlement to a board of commissioners

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to be appointed by a county court in one of the counties in the State of Alabama in pursuance of an act of the Legislature of the said state?

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MR. JUSTICE WAYNE delivered the opinion of the Court.

Suydam and Boyd, partners in trade, citizens of the State of New York, sue the defendants as administrators of David Newton upon a promissory note given by the intestate to the plaintiff dated New York, September 1, 1835, payable in twelve months.

The defendants, as we are left to gather from a most imperfect record -- for the pleadings, except the declaration, are not given -- plead in abatement of the suit that the estate represented by them has been declared, under proceedings of a

statute of Alabama, to be insolvent, and in such case that they are not liable to be sued.

The judges of the circuit court were opposed in opinion upon the question "Is the plea that the estate of the said deceased is insolvent sufficient in law to abate the said action?"

The statute of Alabama will be found in Aikin's Digest of the

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Laws of Alabama 151. The second section of it declares that the estates of persons altogether insolvent shall be distributed among the creditors in proportion to the sums respectively due after the payment of debts due for the last sickness and necessary funeral expenses. For the purpose of ascertaining such insolvency, the executor is permitted to exhibit to the orphans' court an account and statement of the effects of the estate, including in it also the lands, tenements, and hereditaments of the testator or intestate, and if it shall appear to the orphans' court that such estate is insolvent, then, after ordering the lands, tenements, and hereditaments of the testator or intestate to be sold, the court shall appoint two or more commissioners, with power to receive and examine the claims of creditors of the estate, and the commissioners are directed to give notice of the times and places of their meeting by notifications posted up in such public places and in such newspapers as the orphans' court, or chief justice thereof may direct. Six months, and not more than eighteen months, shall be allowed by the court to creditors to bring in and prove their claims before the commissioners. The commissioners, at the end of the time limited, are to make a report on oath to the orphans' court of all the claims which have been laid before them, with the sums allowed by them on each respective claim. The court then shall order the residue of the estate, personal and real -- the real estate being sold according to law -- to be paid and distributed among the creditors whose claims have been allowed by the commissioners in proportion to the sums respectively due. Provision is then made, either at the instance of a creditor or executor or administrator, either being dissatisfied with the report on a particular claim, under an order of the orphans'

court, to refer that claim to a court of referees, whose report upon it, when returned to the orphans' court and approved, is declared to be final and conclusive. And it is further declared that no suit or action shall be commenced or sustained against any executor or administrator after the estate is represented insolvent except in certain cases not necessary to be now noticed. But the statute further provides for the liability of the executor or administrator to the creditors for their respective shares in the distribution, and then declares that the claims of creditors which have not been put before the commissioners within the time limited, or which have not been allowed in the other modes directed by the statute, shall be forever barred unless such creditor shall find other estate of the deceased, not inventoried or accounted for by the executor or administrator, before distribution.

Is then the insolvency of the estate, judicially declared under the statute, sufficient in law to abate the suit of the plaintiff?

We think such an insolvency cannot abate the action upon which this division of opinion has been certified to this Court. The statute itself contains a provision which meets the question. The sixth section declares that

"All claims against the estates of deceased persons shall be presented to the executor or administrator within eighteen

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months after the same shall have accrued, . . .or within eighteen months after letters have been granted and not after, and all claims not presented within that time, shall be forever barred from recovery,"

but excepts, among other exceptions, debts contracted out of Alabama. Now if an estate may be declared insolvent under the statute in less than the longest time allowed to creditors to present their claims, and creditors for debts contracted out of the state are not limited to that time to present their claims, it follows as a necessary consequence that an estate having been declared to be insolvent within the shorter time cannot exclude such creditor from maintaining a suit against the executor or administrator. And in cases of insolvency declared after eighteen

months, creditors of debts contracted out of the state cannot be included in the exclusion from the right to sue, for no time is limited for such claims to be presented, and in an action to enforce them, a recovery can only be prevented by such defenses as would prevail in any other suit.

We think this a conclusive interpretation of the sixth section, and on this ground, that the plea of the estate being insolvent is not sufficient to abate this action.

But if the sixth section was not in the statute, our opinion would be the same, from the rule which must be applied to interpret such a statute. Statutes are mandatory, except of the established rules for the interpretation of them.

This is a statute which, by the exemption it gives to executors and administrators from suit, would seem to imply a denial to creditors of the intestate the right to sue, without respect to the foreign country or state in our own Union where the debt was contracted. It is a general statute, without a direct application to contracts made out of Alabama, and its construction cannot be extended to such contracts. *Ratio est, quia statutum intelligit semper disponere de contractibus factis intra et non extra territorium suum.* Casaragis Disc. 130, sec. 14-16.20.22. A sovereign state, and one of the states of the Union, if the latter were not restrained by constitutional prohibitions, might, in virtue of sovereignty, act upon the contracts of its citizens, wherever made and discharge them by denying a right of action upon them in its courts. But the validity of such contracts as were made out of the sovereignty or state, would exist and continue everywhere else, according to the *lex loci contractus.* This shows the reason for and force of the rule just given, and it may be laid down as a safe position that a statute discharging contracts or denying suits upon them without the particular mention of foreign contracts does not include them.

We do not mean, however, to decide this question solely by the interpretation which has been given to the statute.

It may be put upon other grounds, making our conclusion equally certain. They are such as are connected with the constitutional and legal rights of the plaintiffs to

sue in the circuit courts of the United States, and upon the law which under our system does not permit an act of insolvency completely executed under the authority

of one state to be a good bar against the recovery upon a contract made in another state.

The eleventh section of the act to establish the Judicial courts of the United States carries out the constitutional right of a citizen of one state to sue a citizen of another state in the circuit court of the United States and gives to the circuit court "original cognizance, concurrent with the courts of the several states, of all suits of a civil nature, at common law, and in equity," &c.; It was certainly intended to give to suitors having a right to sue in the circuit court remedies coextensive with these rights. These remedies would not be so if any proceedings under an act of a state legislature, to which a plaintiff was not a party, exempting a person of such state from suit, could be pleaded to abate a suit in the circuit court. The division of opinion too, as it is presented in the record, is brought within the decisions of this Court in *Sturges v. Crowninshield,* 4 Wheat. 122, and *Ogden v. Saunders,* 12 Wheat. 213. It must be remarked, however, that the statute of Alabama is one for the distribution of insolvent estates, not liable to the objections of a general law; and is only brought under the cases mentioned, by an attempt to extend its provisions to a citizen of another state.

In *Sturges v. Crowninshield* it is said

"Every bankrupt or insolvent system in the world must partake of the character of a judicial investigation. Parties whose rights are affected, are entitled to a hearing. Hence, any bankrupt or insolvent system professes to summon the creditors before some tribunal to show cause against granting a discharge to the bankrupt. But on what principle can a citizen of another state be forced into the courts of a state for this investigation? The judgment to be passed is to prostrate his rights, and on the subject of those rights, the Constitution exempts him from the

jurisdiction of the state tribunals without regard to the place where the contract may originate."

In *Ogden v. Saunders,*

"A bankrupt or insolvent law of any state which discharges both the person of the debtor and his future acquisitions of property is not a law impairing the obligation of contracts so far as respects debts contracted subsequently to the passage of the law. But a certificate of discharge cannot be pleaded in bar of an action brought by a citizen of another state in the courts of the United States or of any other state than that where the discharge was obtained."

Though this is a statute intended to act upon the distribution of insolvent estates, and not a statute of bankruptcy, whatever exemption it may give from suit to an executor or administrator of an insolvent estate against the citizens of Alabama, a citizen of another state, being a creditor of the testator or intestate, cannot be acted upon by any proceedings under the statute unless he shall have voluntarily made himself a party in them, so as to impair his constitutional and legal right to sue an executor or administrator in the circuit court of the United States.

Let it then be certified to the circuit court of the United States for the Southern District of Alabama as the opinion of this Court

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that the plea that the estate of the decedent is insolvent is not sufficient in law to abate the plaintiffs' action.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Alabama, 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 case made and provided and was argued by counsel, on consideration whereof it is the opinion of this Court that "the plea that the estate of the said decedent is insolvent is not sufficient in law to bate the plaintiffs' action."

Whereupon it is now here ordered and adjudged by this Court that it be so certified to the said circuit court accordingly.