Chapman Vs. Forsyth

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Appeal No. : 43 U.S. 202

Appellant : Chapman

Respondent : Forsyth

Judgement :

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Chapman v. Forsyth

43 U.S. (2 How.) 202

ON CERTIFICATE OF DIVISION FROM THE CIRCUIT COURT

OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY

SYLLABUS

Under the late Bankrupt Act of the United States, the existence of a fiduciary debt, contracted before the passage of the act, constitutes no objection to the discharge of the debtor from other debts.

A factor, who receives the money of his principal, is not a fiduciary within the meaning of the act.

A bankrupt is bound to state, upon his schedule, the nature of a debt if it be a fiduciary one. Should he omit to do so, he would be guilty of a fraud, and his discharge will not avail him, but if a creditor, in such case, proves his debt and receives a dividend from the estate, he is estopped from afterwards saying that his debt was not within the law.

But if the fiduciary creditor does not prove his debt, he may recover it afterwards from the discharged bankrupt by showing that it was within the exceptions of the act.

The record was as follows:

The following statement of questions and points of law which arose in this case, and the adjournment thereof into the Supreme Court of the United States for decision, was ordered so be entered, to-wit:

"This was an action of assumpsit for the proceeds of 150 bales of cotton, shipped to and sold by defendants, as the property of the plaintiff, the defendants having been a factor,"

&c.;

The defendant, Forsyth, pleaded he had been duly discharged as a bankrupt, on his own voluntary petition.

To this the plaintiff replied; the replication was demurred to, and

upon the hearing and argument of the demurrer, which presented the whole case, the following questions of law arose, and on which the judges were opposed in opinion:

"1st. Could the defendant be discharged, as a bankrupt, from any part of his debts, on his own petition, when he was indebted, in a fiduciary capacity, in part, within the exception in the first section of the bankrupt law -- that is, were all persons indebted excluded, that held and owed moneys in the capacity of trustees (as a class), from the benefit of the act, although they owed other debts besides the moneys held in trust?"

"2d. Is a commission merchant and factor (who sells for others), or indebted in a fiduciary capacity, within the act, provided he withholds the money received for property sold by him, and which property was sold on account of the owner, and the money received on the owner's account?"

"3d. Whether, when the decree of discharge, and the regular certificate of being a bankrupt, have been obtained without contest in the district court, they are conclusive and binding on all persons named as creditors by the bankrupt in his petition and list of creditors, and whether a creditor, who did not prove his debt, and which the bankrupt owed said creditors in a fiduciary capacity, can come into court, and sue the bankrupt for such fiduciary debt, notwithstanding the decree of discharge and certificate, the debt having been set forth in the petition and list as an ordinary debt, not due in a fiduciary character?"

Which divisions of opinion, at the request of the plaintiff, are certified to the Supreme Court of the United States, for their opinion and certificate on the three questions on which the judges of this Court were opposed in opinion.

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MR. JUSTICE Mc LEAN delivered the opinion of the Court.

This was an action of assumpsit for the proceeds of 150 bales of cotton, shipped to and sold by defendants as the property of the plaintiff the defendants being factors. The defendant, Forsyth, pleaded that he had been duly discharged as a bankrupt on his own voluntary petition. A replication was filed, to which there was a demurrer.

The suit was brought in the circuit court for the District of Kentucky; and on the argument of the demurrer the following points were made, on which the opinions of the judges were opposed, and at the request of the parties the points were certified to this Court.

"1. Could the defendant be discharged as a bankrupt from any part of his debts on his own petition, when he was indebted in a fiduciary capacity in part, within the exception in the first section of the bankrupt law; that is, were all persons indebted, excluded, that held and owed moneys in the capacity of trustees (as a class), from the benefit of the act, although they owed other debts besides the moneys held in trust?"

"2. Is a commission merchant and factor, who sells for others, indebted in a fiduciary capacity within the act, provided he withholds the money received for property sold by him, and which property

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was sold on account of the owner, and the money received on the owner's account?"

"3. Whether, when the decree of discharge and the regular certificate of being a bankrupt, have been obtained without contest in the district court, they are conclusive and binding on all persons named as creditors by the bankrupt in his petition and list of creditors; and whether a creditor, who did not prove his debt, and to whom the bankrupt was indebted in a fiduciary capacity, can come into court and sue the bankrupt for such fiduciary debt, notwithstanding the decree of discharge and certificate, the debt having been set forth in the petition and list as an ordinary debt, not due in a fiduciary character?"

These questions are far less important than they would have been had the bankrupt law not been repealed. But they are still important as affecting a large class of citizens and to a large amount.

The first section of the bankrupt law provides that

"All persons whatsoever, residing in any state, territory, or district of the United States, owing debts which shall not have been created in consequence of a defalcation as a public officer, or as executor, administrator, guardian, or trustee, or while acting in any other fiduciary capacity,"

shall, on a compliance with the requisites of the bankrupt law, be entitled to a discharge under it.

The debts here specified are excepted from the operation of the act. This exception applies to the debts and not to the person, if he owe other debts. The language is all persons owing debts, not of the description named, may apply &c.; Now an indebtment by an individual, not created as above stated, is within the provisions of the act, although he may be under fiduciary obligation. This is the natural import of the provision, and it is sustained by reason. It was proper that Congress should not relieve from debts which had been incurred by a violation of good faith, whilst, from other obligations a full discharge to the same person should be given. But to have refused a discharge because the individual owed a fiduciary debt, would, by withholding a general privilege, have superadded a penalty to a past transaction without notice. That this consideration influenced the legislature is shown by the fourth section, which provides, "that no person who after the passage of the act shall apply trust-funds to his own use," shall be discharged. Now if a person who owed a fiduciary debt was not entitled to a discharge from other debts by the first section, this provision was useless. A misapplication

of trust funds, as declared, covers the enumerated cases in the first section. But, whilst the first section only withholds from the jurisdiction of the bankrupt court fiduciary debts, the fourth declares that if such debts have been contracted subsequent to the law, the individuals shall not be discharged. From this provision the strongest implication arises, that if the fiduciary debts were contracted before the passing of the act, the petitioner would, for other obligations, be entitled to a discharge. Viewing then the first and fourth sections of the act, we are of the

opinion that fiduciary debts, contracted before the passage of the act, constitute no objection to a discharge of the same person for other debts.

The second point is whether a factor, who retains the money of his principal, is a fiduciary debtor within the act.

If the act embrace such a debt, it will be difficult to limit its application. It must include all debts arising from agencies, and indeed all cases where the law implies an obligation from the trust reposed in the debtor. Such a construction would have left but few debts on which the law could operate. In almost all the commercial transactions of the country, confidence is reposed in the punctuality and integrity of the debtor, and a violation of these is, in a commercial sense, a disregard of a trust. But this is not the relation spoken of in the first section of the act.

The cases enumerated, "the defalcation of a public officer," "executor," "administrator," "guardian," or "trustee," are not cases of implied but special trusts, and the "other fiduciary capacity" mentioned, must mean the same class of trusts. The act speaks of technical trusts, and not those which the law implies from the contract. A factor is not, therefore, within the act.

This view is strengthened and indeed made conclusive by the provision of the fourth section which declares that no "merchant, banker, factor, broker, underwriter, or marine insurer" shall be entitled to a discharge, "who has not kept proper books of accounts." In answer to the second question, then, we say that a factor who owes his principal money received on the sale of his goods, is not a fiduciary debtor within the meaning of the act.

The answer of the first question leads necessarily to the answer of the third. For if fiduciary debts are not within the act, a discharge can in no respect affect the interest of the fiduciary creditor. Without his consent, it is clear the bankrupt court can take no jurisdiction of his debt. And although the bankrupt may include the

debt in his schedule, and the discharge may be general, yet as the law gave the court no jurisdiction over the debt it is not discharged.

The fourth section provides,

"That the discharge and certificate, when duly granted, shall in all courts of justice be deemed a full and complete discharge of all debts, contracts, and other engagements of such bankrupt which are provable under the act, and may be pleaded as a complete bar,"

&c.;

Now it is supposed that if a fiduciary debt, within the act, be placed upon his schedule by the bankrupt, that it is incumbent on the creditor to preserve his right by showing before the bankrupt court the nature of his debt. And that consequently should he fail to appear after notice, he will be barred, as other creditors, by the discharge.

The bankrupt is bound to show on his schedule the nature of his debts, at least so far as to enable the court to take jurisdiction of them. If, for instance, he owe a debt as executor, and he state it on his schedule as an ordinary debt, he commits a fraud on the law, and the discharge cannot avail him. If in this respect he suppress the truth or state falsehood, he is guilty of fraud, and this may be shown against his discharge.

But as the discharge operates only on debts, contracts &c.;, which are provable under the act, it is said that consent cannot include fiduciary debts.

Such debts, without the assent of the creditor, are clearly not within the act. But if his debt shall be found on the schedule, and he not only proves it but receives his proportionate share of the dividend, he is estopped from saying that it was not within the law. He is a privileged creditor, and is not bound by the bankrupt law; but he may waive his privilege. As a creditor, he has a right to come into the bankrupt court and claim his dividend. He does not establish his claim as a fiduciary one, but as a debt "provable within the statute." And having done this, he

can never controvert the discharge.

From these considerations we are led to say, in answer to the third question, that unless a fiduciary creditor shall come into the bankrupt court, prove his debt &c.;, he is not bound by the discharge, but may sue for and recover his debt from the discharged bankrupt by showing that it was within one of the exceptions of the first section.