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Aspden Vs. Nixon

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Appeal No. : 45 U.S. 467

Appellant : Aspden

Respondent : Nixon

Judgement :

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Aspden v. Nixon

45 U.S. (4 How.) 467

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF EAST PENNSYLVANIA

SYLLABUS

Where a person domiciled in England died leaving property both in England and Pennsylvania, and the executor took out letters testamentary in both countries in a suit in England against the executor by the administrator of a deceased claimant,

the parties were restricted to the limits of the country to which their letters extended.

The executor could not rightfully transmit the Pennsylvania assets to be distributed by a foreign jurisdiction.

So the administrator of the deceased claimant, acting under letters granted in England, only represented the intestate to the extent of these English letters, and could not be known as a representative in Pennsylvania.

Two suits, therefore, one in England between the executor and the administrator of a deceased claimant, acting under English letters, and the other in Pennsylvania between the executor and another administrator of the claimant, acting under Pennsylvania letters, are suits between different parties. And neither the decree nor proceedings in the English suit are competent evidence in the American suit. The property in controversy is different in the two suits.

A judgment or decree set up as a bar by plea or relied on as evidence by way of estoppel, to be conclusive, must have been made

1. By a court of competent jurisdiction upon the same subject matter.

2. Between the same parties.

3. For the same purpose.

On either ground, the evidence in the English suit is incompetent to prove anything with regard to the Pennsylvania assets.

Although, in cases peculiarly circumstanced, one jurisdiction administering assets may, as matter of comity, transmit them to a foreign jurisdiction, yet they cannot be sent to England where a suit is pending in this country for the American assets. A decree of the High Court of Chancery in England purporting to distribute assets so situated would be treated as void for want of jurisdiction.

The circuit court of the United States sitting in Pennsylvania is bound by the same rules which govern the local tribunals of that state, and would require a devisee to give security to refund in case a debt should afterwards be proved against the testator. Other provisions of the laws of that state would also embarrass a court in exercising the comity referred to.

Under the influence of similar laws, the courts of the several states have been so much restrained as to render the exercise of comity among each other little more than a barren theory. More could not be required between the courts of this country and England.

There having been no evidence introduced in the English suit to establish the heirship of the claimant, the decision of the court there dismissing the bill is not conclusive as to the title. What effect those proceedings ought to have in this country this Court will not now decide. It only decides that the evidence in support of the title is not barred in the circuit court of Pennsylvania.

The judgment of a foreign court upon a question of title cannot preclude a claimant from introducing evidence in a second suit in another country for other property. Such a proposition is not recognized either by the jurisprudence of the United States or of Great Britain; nor is the opinion of this Court in conflict with the established comity of nations.

The circumstances of the case are set forth in the following statement, which the reporter finds prefixed to the opinion of the Court and which supersedes the necessity of any statement of his own.

In 1791, Matthias Aspden, a subject of the King of Great

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Britain and domiciled there, being in the State of Pennsylvania, where he had formerly resided, made his will, whereby he devised his property to his heir at law with the exception of some trifling specific bequests. He died in England, in 1824 (which country continued to be his place of domicile), leaving much property there

and also much in Pennsylvania. The only surviving executor named in Matthias Aspden's will was Henry Nixon, of Philadelphia, who proved the will and took out letters testamentary in the Orphans' Court of Philadelphia County in November, 1824, and he did the same in the proper court in England, in 1825.

The testator left no children, and different persons claimed to be the true devisee, within the description of "heir at law."

In 1828, Samuel Packer filed his bill against the executor Nixon in the Circuit Court of the United States for the Eastern District of Pennsylvania alleging that he, Packer, was the devisee and praying the estate might be distributed to him.

Under this bill, numerous complainants came in by petition representing themselves to be the next of kin and the true devisees in Pennsylvania and claiming parts of the estate, and in December, 1831, John Aspden, of the County of Lancashire, England, was admitted to come in as co-complainant, he claiming to be the rightful heir at law and devisee of Matthias Aspden.

In favor of this latter claimant, a decree was made in 1833 and the bill ordered to be dismissed as to all other claimants. A portion of the latter appealed to this Court.

In 1834, Janet Jones, Thomas Poole, and Mary, his wife, moved to file a supplemental bill and bill of review in the circuit court; the said Janet, and Mary claiming to be heirs at law of John Aspden, of London, who was the heir of Matthias Aspden, at the time of Matthias' death, as they alleged. This motion was overruled as coming too late. Thus stood the proceeding in the supreme court on the appeal taken in 1833.

At the January term, 1835, when the cause came on for argument upon the merits, a question was presented by the counsel for the appellants whether the bill, taken by itself or in connection with the answer, contained sufficient matter upon which the court could proceed and finally dispose of the cause. It was submitted that the bill contains no averment of the actual domicile of the testator at the time he made his will or at any intermediate period before or at his death. The court directed this

question to be argued before the argument should proceed on the merits.

The court, in its decision of this preliminary question, said that an averment of the testator's domicile is indispensable in the bill and that the case ought to be remanded to the circuit court for the purpose of having suitable amendments made in this particular. And the court, on the question of the motion to permit the

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petitioners for a review to be heard before the Supreme Court, made the following remarks:

"It appears from the motions which have been made to this Court as well as from certain proceedings in the court below which have been laid before us in support thereof that there are certain claimants of this bequest, asserting themselves to be heirs at law, whose claims have not been adjudicated upon in the court below on account of their having been presented at too late a period. As the cause is to go back again for further proceedings, and must be again opened there for new allegations and proofs, these claimants will have a full opportunity of presenting and proving their claims in the cause, and we are of opinion that they ought to be let into the cause for this purpose. In drawing up the decree remanding the cause, leave will be given to them accordingly. The decree of the circuit court is therefore reversed and the cause is remanded to the circuit court for further proceedings, in conformity to this opinion."

34 U. S. 9 Pet. 505.

On the mandate's going down in June, 1835, John Aspden of Lancashire filed his amended bill stating the domicile &c.;, and John A. Brown, administrator of John Aspden of London, together with Janet Jones and Mary Pool (then widows), the daughters of John of London, were let in to file their petition claiming the estate of Matthias Aspden on the ground that John of London was the heir.

To this petition, Nixon pleaded that John of London, in 1825, had filed his bill against him, Nixon, as executor &c.;, in the High Court of Chancery in England for

an account and distribution of the estate, which bill had been answered and the answer replied to. That John of London died in 1828, intestate, his domicile being in England at the time, and that Thomas Poole, in right of his wife Mary, and Janet Jones, administered on said John's estate in England; that they, as such administrator and administratrix, proceeded to revive the suit in chancery against the defendant, Nixon, which was brought to a hearing in the High Court of Chancery in 1830 and was heard, and the bill dismissed.

And that afterwards another bill was brought by said Thomas Poole and Janet Jones, as administrator and administratrix of John Aspden, against said Nixon, as executor of Matthias Aspden, for the same precise subject matter, in the Court of Exchequer in England, to which the decree in the High Court of Chancery was pleaded in bar, and which plea in bar was sustained, and the latter suit dismissed by the Court of Exchequer, and on these proceedings the defendant Nixon relied as a bar to any further proceedings on the part of the personal representatives of John Aspden of London. The court permitted the latter to reply to the plea of Nixon. The replication alleges that the bill in the High Court of Chancery in England was dismissed "for want of prosecution" because the claimants were too poor to prosecute the same or to

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procure their evidence of title, and that the bill in the Exchequer was dismissed as stated in the plea.

A commission was awarded by order of the court, and evidence taken in England to establish the facts alleged by the replication. From this it appears that the bills were filed and the proceedings had which are set forth by Nixon's plea, and also that the representatives of John Aspden of London failed to produce any evidence of their title by reason of their poverty. And on the "effect" of this evidence to support the plea in bar the judges were divided in opinion.

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MR. JUSTICE CATRON (after having stated the facts of the case as they are recited in the commencement of this report) proceeded to deliver the opinion of the court.

We understand the true question submitted to this Court to be whether the decree dismissing the bill, made by the High Court of Chancery in England, bars and precludes John A. Brown, the Pennsylvania administrator of John Aspden of London, from prosecuting his claim as administrator for the Pennsylvania assets of the estate of Matthias Aspden, found in the hands of Joseph Trotter, the present administrator with the will annexed. Nixon having died, the contest in the British court was between an executor there and administrators, also there. The complainants sued and the defendant resisted the claim alike in a representative capacity, and were restricted by the authority under which they respectively acted to the limits of the country to which their letters extended. Under his English letters testamentary, Nixon could do no act as executor beyond England; so neither could he voluntarily transfer the Pennsylvania assets to the foreign jurisdiction, there to be distributed, as this would have been in violation of his letters in this country; by these he held the assets here as trustee, and in subordination to the laws of Pennsylvania and the orders of the Orphans' court executing those laws, as well as in subordination to the suit pending in the circuit court.

So on the other hand, on the death of John Aspden of London, the bill in chancery ceased to be his bill and became the suit of the parties for whose benefit it was revived; when this was done, they represented John Aspden of London, as administrator of his estate, and the same rules applied to them as to Matthias' executor; they only represented the intestate by virtue of, and to the extent of, their English letters, and could not be known as representatives in Pennsylvania. Again, the representative character of Nixon in England was altogether distinct from his character as executor in Pennsylvania. And so also the English administrators of John Aspden's estate are equally distinct from Brown, who is the administrator of his estate in Pennsylvania. It follows the English suit was between different parties from those prosecuting and defending the American suit, and therefore neither the decree, nor the proceedings on which it is founded, are competent evidence

between the parties to the present suit, for this reason; and yet more conclusively for another, which is that the property in controversy here is distinct from that sued for in England.

As applicable to such a state of facts, the rules of evidence governing courts of justice are that a judgment or decree set up as a bar by plea, or relied on as evidence by way of estoppel, to be conclusive,

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must have been made 1. by a court of competent jurisdiction upon the same subject matter; 2. between the same parties; 3. for the same purpose; and, on either ground, the evidence submitted to our judgment is incompetent to prove anything in regard to the Pennsylvania assets.

But these conclusions are resisted by those setting up the bar on this ground -- that the administration of the domicile is the principal administration on the estate of Matthias Aspden, and this being in England, and the assumed devisee's residence also being there, the Pennsylvania administration was auxiliary to the foreign one; that in the British suit, the American assets might have been recovered from the executor Nixon, the bill having gone for the Pennsylvania assets as well as the English.

However true it may be in cases peculiarly circumstanced that one jurisdiction administering assets may, as matter of comity, transmit them to a foreign jurisdiction, there to be distributed, still the doctrine can have no application here, as no assets had been transmitted to England from Pennsylvania, and a suit was pending, and in no part decided, in this country for the American assets before and at the time the decree in England was made, and therefore an assumption to distribute the assets in this country by the High Court of Chancery in England must necessarily have been treated by the circuit court as merely void for want of jurisdiction of the subject matter in the foreign court. Even up to this date, the American court could exercise no comity, as is manifest from the state of the proceedings before us; nor will there be any occasion for its exercise hereafter, as

all the parties claiming the estate are before the circuit court anxiously litigating their claims and seeking distribution at its hands.

It is proper, however, to remark in this connection that the courts of the United States held in Pennsylvania are administering the laws of that state, and bound by the same rules governing the local tribunals, and that by these laws a devisee, before he can take a legacy, must given security that if any debt or demand should afterwards be recovered against the estate of the testator, the devisee shall refund. Purdon's Dig., Ex. & Ad. 41, 47. So also there are many other provisions in the laws of Pennsylvania governing the distribution of estates that would embarrass the Orphans' courts in exercising the comity referred to. The like laws exist in other states of the Union, and under the influence of such laws, the courts of the states have been so much restrained as to render an exercise of comity among each other little more than a barren theory; nor could more be required in a case like the present, where part of the assets were administered abroad, under independent letters granted there and by a tribunal that was under no obligations to extend comity to the probate courts

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of this country, whatever might be done in the exercise of a sound discretion.

The next ground, and that relied on with most confidence in support of the bar, is that John Aspden of London, and those representing him after his death, were British subjects, residing in Great Britain, and that the contest and only matter litigated in the High Court of Chancery was whether John Aspden of London was or was not the heir and consequent devisee of Matthias Aspden, and that this fact, having been found by the decree against the complainants, established and concluded all proof to the contrary of such adjudication directly on the single fact of title, and that the representatives of John of London could not be heard in another jurisdiction to disavow the conclusiveness of the finding by a court of their own government, to which they had resorted.

That the English bill involved directly the question of heirship, and that nothing else was contested, is undoubtedly true, but it is equally true that no evidence was introduced by the complainants there to establish their title, nor was there had any adjudication on the merits of their claim, so that no equitable considerations are violated by our present judgment in any aspect that the evidence may be viewed.

What effect the decree has in England is a question for the courts of that country to settle; nor will we now determine whether, in our judgment, by the comity of nations, the proceedings should have a similar effect here, or what effect they should have. The question for us to dispose of is whether the administrator and distributees of John Aspden of London shall be heard in the circuit court, or whether their evidence of title is barred. We have already stated that the Pennsylvania assets stand unaffected, and will only add that the assumption that a complainant or plaintiff is estopped by a judgment against him from introducing evidence in a second suit, and in another country, for other property, on the ground that the fact of title had been adjudged and concluded by a former judgment or decree (thus separating the title from the property), is an abstract proposition inconsistent with the due administration of justice and not recognized in our system of jurisprudence or that of Great Britain, and is aside from any question affecting the comity of nations.

Giving the British decree all the force and effect that could be accorded to it if it had been made in a state of this Union, it yet establishes no fact as respects any title to the Pennsylvania assets, nor would the rules of evidence be sufficient in separate suits pending in the same court for different parcels of property, even between the same parties. And therefore we certify to the circuit court that the evidence introduced "touching the plea in bar" is no estoppel to the representatives of John Aspden of

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London insofar as they seek to recover the assets of Matthias Aspden's estate in the course of administration by the Orphans' Court of Philadelphia County. Further than this we do not pretend to determine on the effect of the evidence, as we are

not aware that any controversy now exists in the circuit court in regard to any other assets.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Pennsylvania and on the point and question on which the judges of the said circuit court were opposed in opinion and which was 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 evidence introduced "touching the plea in bar" is no estoppel to the representatives of John Aspden of London insofar as they seek to recover the assets of Matthias Aspden's estate in the course of administration by the Orphans' Court of Philadelphia County, whereupon it is now here ordered and decreed by this Court that it be certified to the said circuit court accordingly.

Dissenting, MR. CHIEF JUSTICE TANEY and MR. JUSTICE Mc LEAN.

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