Maxwell Vs. Kennedy

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Appeal No. : 49 U.S. 210

Appellant : Maxwell

Respondent : Kennedy

Judgement :

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Maxwell v. Kennedy

49 U.S. (8 How.) 210

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF ALABAMA

SYLLABUS

A lapse of forty-six years is a bar to relief in equity, although the creditor, during all that time, supposed the debtor to be insolvent and not worth pursuing, where it appears that for a considerable portion of that time he was in a condition to pay,

and the creditor might, by reasonable diligence, have discovered it, and recovered the money by a suit at law.

Where, upon the case stated in the bill, the complainant is not entitled to relief by reason of lapse of time and laches on his part, the defendant may demur.

The bill was filed in the court below by Maxwell, the appellant,

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against the above-named defendants, as the heirs of William E. Kennedy. Joseph and Martha Kennedy were his children, and Jesse Carter and Daniel E. Hall had married his daughters.

As the sole question which came up to this Court was the correctness of a judgment of the circuit court in sustaining a demurrer to the bill, it is only necessary to state the substance of it.

The bill averred that on 10 November, 1797, Robert Maxwell, the intestate of the complainant, recovered a judgment in South Carolina, against William E. Kennedy, the ancestor of the present defendants. The judgment was for 1,000 sterling, and costs, 114 9 *s* . 2 *d* ., no part of which was ever paid.

That immediately after the rendition of the judgment, in order to avoid the service of a *capias ad satisfaciendum* which had been issued, and also to avoid being apprehended for the murder of the said Maxwell, for which he had been indicted, Kennedy fled from South Carolina. Two or three years afterwards he was apprehended in Georgia, brought back to South Carolina, tried and acquitted. At this time he was stated in the bill to have been insolvent. Immediately afterwards, he returned to Georgia, where he remained for four or five years, still insolvent, so that no effort could have been successfully made to collect the above-mentioned judgment.

That after the expiration of that time Kennedy left Georgia, without its being known to anyone in that part of South Carolina where he had gone, until about three years before his death, when, some time in the year 1822, it was ascertained that

he was living in Mobile. That he was then residing with his brother, one Joshua Kennedy, and apparently dependent upon him for support. That when Kennedy went to Mobile, it was in a foreign country, and little or no intercourse existed between it and South Carolina; nor was there for a long time after it had been ceded to the United States. That while Florida was yet a Spanish province, *viz.,* in the year 1806, the said Kennedy acquired an imperfect title to a considerable estate in land, of which, however, the complainant was entirely ignorant. That on 13 December, 1824, he conveyed this estate to his brother, Joshua Kennedy, for the consideration of $10,000, which, the bill averred, had never been paid.

That it was not until after the date of this deed, that the complainant discovered that William E. Kennedy was living, and he was then wholly without property.

That in the year 1805, he had married a female subject of

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the Crown of Spain, who owned considerable real and personal estate, all of which was settled upon her previously to the marriage.

That on 9 April, 1825, William E. Kennedy died. Joshua Kennedy administered upon the estate, and returned an inventory to the orphans' court, amounting in value to $267. Up to the time of Joshua's death, which took place in 1839, he constantly represented his brother William to have died insolvent, and these representations prevented the complainant from attempting to enforce the long-standing judgment.

That on or about 22 April, 1839, the heirs of the said William E. Kennedy, *viz.,* the defendants in the present suit, filed a bill in the Court of Chancery of the First Chancery Division and Southern District of the State of Alabama against the heirs and executors of Joshua Kennedy and obtained a decree against them, which, on an appeal to the supreme court of Alabama, was confirmed. This decree adjudged that the deed of 13 December, 1824, was not made upon any consideration valuable in law, but for the purpose of securing an adequate provision for the children of the said William. It therefore further adjudged that the heirs of William

were entitled to one-half of the unsold lands, and one-half of the proceeds of all which had been sold.

The bill then proceeded to aver, that a compromise had been made by the heirs and representatives of these two brothers, a discovery of which was prayed, and that, when made known, the share of the lands so conveyed to the heirs of William E. Kennedy might be held bound to satisfy the judgment obtained by the intestate of the complainant. It concluded with a general prayer for other and further relief.

One of the exhibits attached to the bill was a copy of the decree just mentioned, in the case of *Joseph S. Kennedy and others, Heirs of William E. Kennedy, Complainants v. Executors and Heirs of Joshua Kennedy,* which decree was passed on 28 November, 1840.

To the bill filed by Maxwell in the circuit court of the United States against the heirs of William E. Kennedy the defendants demurred.

In May, 1845, the cause came up for argument upon the demurrer, when the circuit court sustained the demurrer and dismissed the bill.

From that decree the complainant appealed to this Court.

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

The facts stated in the bill are admitted by the demurrer, and the only question is whether the complainant is entitled to relief in a court of equity, when so many years have elapsed, since the judgment was obtained against the father of the defendants.

The judgment was rendered in South Carolina on 10 November, 1797, and this bill was filed against the appellees in Alabama on 22 February, 1844. A period of more than forty-six years had therefore elapsed, during which neither the plaintiff who obtained the judgment, nor his administrator, nor the present complainant,

who is administrator *de bonis non,* made a demand of the debt, or took any step to procure its payment.

It is not alleged in excuse for this delay that his residence was, during all the time, unknown. On the contrary, it is admitted that it was known for some six or eight years after the judgment was obtained, and although he was afterwards lost

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sight of for a long time, and supposed to have gone beyond sea and died in parts unknown, yet he was again discovered in 1822 residing in the State of Alabama, where for three years afterwards he was accessible to the creditor and amenable to judicial process.

Neither is it alleged that he designedly and fraudulently concealed his place of residence from the creditor, nor that the conveyance of his property was made for the purpose of hindering or preventing the recovery of this debt. The delay is accounted for and sought to be excused altogether upon the ground that when his place of residence was known, he was always in a state of poverty and insolvency which made it useless to proceed against him.

It is, however, not necessary, in deciding the case, to inquire whether even this state of poverty would justify the delay of so many years without some demand upon the party or some proceeding on the judgment to show that it was still regarded as a subsisting debt and intended to be enforced whenever the debtor was able to pay. The facts stated in the bill, and those which appear in the exhibits filed with it by the complainant, do not show this continued condition of utter destitution and want which the complainant relies upon. For when he was discovered in 1822 in Alabama, his situation as to property was such as to make it highly probable that the debt might then have been recovered by an action at law if it was not already barred by the act of limitations of that state.

This appears from the decree of the chancery court of the state in a controversy between the heirs of William E. Kennedy, the debtor, and the heirs of his brother Joshua, which decree is one of the complainant's exhibits. It shows that in 1818 or

1819, the debtor held in his own right an undivided moiety of the real estate, which he conveyed to his brother, Joshua Kennedy, in 1824, as mentioned in the bill. And this conveyance, upon the face of it, purported to be in consideration of the sum of $10,000 -- a sum sufficient to pay the principal of the judgment and a large portion of the interest. It is true that the complainant, in that part of the bill in which he speaks of this conveyance, states that he did not discover that the debtor was living and residing at Mobile until after the conveyance was made. If this allegation was consistent with the other statements in the bill, and could be regarded as a fact in the case admitted by the demurrer, still, as he died in 1825, reasonable diligence required that the creditor should have taken some measures to ascertain whether the $10,000 had been paid and to compel his administrator, who was also the grantee

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in the deed, to account for it. The creditor had no right to presume, without inquiry, that his debtor, who had sold property for so large a sum of money, had within a year afterwards died utterly insolvent and almost penniless, so as to make it useless to investigate the State of his affairs or to take any step towards the recovery of his debt. There is reason for believing, from the facts stated in the decree above mentioned that, with proper efforts, he would at that time have learned the trust upon which the conveyance was made and discovered that the debtor had left property of sufficient value to be at all events worth pursuing.

But the complainant cannot put his claim upon the ground that the residence of the debtor was not known until after he had made the conveyance and parted from this property. For in a previous part of his bill, he admits that this information was obtained in 1822, which was two years before the deed was executed. And whatever might have been the wasteful and dissolute habits of the debtor, he yet at that time owned the land which at this late period the complainant is seeking to charge with this debt, and continued to hold it until the conveyance to his brother in 1824. And if the creditor chose to rest satisfied with information as to his habits and manner of living, instead of using proper exertions to find out his situation as to property, his want of knowledge in this respect was the fruit of his own laches.

The fact that he held the title to these lands could undoubtedly have been ascertained with ordinary exertions on his part. And he moreover might have learned, according to the statement in his exhibit before referred to, that after the death of Wm. E. Kennedy, his brother, the grantee in the deed frequently spoke of this conveyance as intended merely to prevent the property from being wasted by the careless habits of his brother, and to preserve it for his family. And as late as 1829, in an advertisement in a newspaper of the place, offering some of this land for sale or lease, he described it as property of which the children of Wm. E. Kennedy were entitled to one-half. With all these means of information open to him from 1822 to 1829, the creditor cannot be permitted to excuse his delay in instituting proceedings upon the ground that he supposed the debtor to have lived and died hopelessly insolvent, until he obtained information to the contrary about the time this bill was filed. If he remained ignorant, it was because he neglected to inquire. If he has lost his remedy at law by lapse of time, or the death of the debtor, it has been lost by his own laches, or that of the administrator who preceded him.

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It is the established rule in a court of equity, that the creditor who claims its aid must show that he has used reasonable diligence to recover his debt, and that the difficulties in his way at law have not been occasioned by his own neglect. A delay of twenty years is considered an absolute bar in a court of equity, unless it is satisfactorily accounted for. But here there has been a delay of more than forty-six years; and under circumstances, for a part of that time, which evidently show a want of diligence.

Indeed, if the court granted the relief asked for, the complainant would not only be protected from the consequences of his own neglect, but would derive a positive advantage from it. For if, when the debtor was discovered in Alabama in 1822, the complainant had then brought an action at law against him and recovered judgment, and then suffered that judgment to sleep until the time when this bill was filed, his claim would have been barred by the statute of limitations of that state.

And if he could now avoid that bar, upon the ground that the act of limitations of Alabama applies only to domestic judgments, and could obtain the aid of a court of equity to enforce the judgment rendered in South Carolina, upon the ground that it is not within that act, he would derive an advantage from his omission to proceed against the debtor when he discovered, in 1822, the place of his residence. He would obtain relief, because he neglected to sue at law when the debtor appears to have been in a condition to pay the debt, and when that fact could have been ascertained by reasonable exertions on his part. In the eye of a court of equity, laches upon a judgment of South Carolina cannot be entitled to more favor than laches upon a judgment in Alabama, and both must be visited with the same consequences. Relief in a court of equity, under the circumstances stated in the bill and exhibits, would be an encouragement to revive stale demands, which had been abandoned for years. The property now sought to be charged might not, in the lifetime of the original parties, have been thought worth pursuing; and in the changes in value continually occurring in this country, it may, after the lapse of so many years, have become of great value in the hands of the heirs of the debtor. And if under such circumstances it could be made liable, an old and abandoned claim, with the accumulated interest of near half a century, might become a tempting speculation. Sound policy, as well as the principles of justice, requires that such claims should not be encouraged in a court of equity.

It is unnecessary, in this view of the case, to determine whether the statute of limitations of Alabama does or does not

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apply to this judgment. For the reasons above stated, we think the lapse of time, upon the facts stated in the bill and exhibits, is, upon principles of equity, a bar to the relief prayed, without reference to the direct bar of a statute of limitations.

Another question has been made in this case, and that is whether the objection arising from lapse of time, apparent on the bill and exhibits, can be taken advantage of on demurrer. Undoubtedly the rule formerly was that it could not, and that doctrine was distinctly laid down by Lord Thurlow in the case of *Deloraine v.*

Browne, 3 Bro.Ch. 646. The rule was perhaps followed for some time afterwards. It was placed upon the ground that this defense was founded upon the presumption that the debt must have been paid, and as a demurrer admits the fact stated in the bill, it admits that the debt is still due, and if admitted to be due, the debtor in equity and good conscience is bound to pay it.

But the presumption of payment is not the only ground upon which a court of chancery refuses its aid to a stale demand. For there must appear to have been reasonable diligence, as well as good faith, to call its powers into action; and if either is wanting, it will remain passive and refuse its aid. This is the principle recognized by this Court in *Piatt v. Vattier,* 9 Pet. 416; *McKnight v. Taylor,* 1 How. 168; and in *Bowman v. Wathen,* 1 How. 189. If, therefore, the complainant by his own showing has been guilty of laches, he is not entitled to the aid of the court, although the debt may be still unpaid.

Upon this principle, the proper rule of pleading would seem to be that when the case stated by the bill appears to be one in which a court of equity will refuse its aid, the defendant should be permitted to resist it by demurrer. And as the laches of the complainant in the assertion of his claim is a bar in equity, if that objection is apparent on the bill itself, there can be no good reason for requiring a plea or answer to bring it to the notice of the court. Accordingly, the rule stated by Lord Thurlow has not been always followed in later cases. In *Hovenden v. Annesley,* 2 Sch. & Lefr. 638, Lord Redesdale says:

"If the case of the plaintiff as stated in the bill will not entitle him to a decree, the judgment of the court may be required on demurrer whether the defendant ought to be compelled to answer the bill."

And in Story's Eq.Pl. 503, and the note to it, he states the rule laid down by Lord Redesdale to be now the established one. In the opinion of the court, it is the true rule. It is evidently founded upon sounder principles of reason than the one maintained by Lord Thurlow, and is better calculated to disembarrass a suit from unnecessary forms and technicalities,

and to save the parties from useless expense and trouble in bringing it to issue, and applies with equal force to a case barred by the lapse of time, and the negligence of the complainant, as to one barred by a positive act of limitations. In the case before us, therefore, the demurrer was proper, and must be

Sustained, and the decree of the court below affirmed.

ORDER

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 was argued by counsel. On consideration whereof, it is now here ordered and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.