

Shelby Vs. Bacon

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Court : US Supreme Court

Decided On : 1850

Appeal No. : 51 U.S. 56

Appellant : Shelby

Respondent : Bacon

Judgement :

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Shelby v. Bacon

51 U.S. (10 How.) 56

*ON CERTIFICATE OF DIVISION OF OPINION BETWEEN THE JUDGES OF
THE CIRCUIT*

*COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF
PENNSYLVANIA*

SYLLABUS

By a statute of Pennsylvania, passed in 1836, "assignees for the benefit of creditors and other trustees" were directed to record the assignment, file an inventory of the property conveyed, which should be sworn to, have it appraised, and give bond for the faithful performance of the trust, all of which proceedings were to be had in one of the state courts.

This Court was vested with the power of citing the assignees before it at the instance of a creditor who alleged that the trust was not faithfully executed.

The assignees of the Bank of the United States chartered by Pennsylvania recorded the assignment as directed and filed accounts of their receipts and disbursements in the prescribed court, which were sanctioned by that court.

A citizen of the State of Kentucky afterwards filed a bill in the Circuit Court of the United States for the Eastern District of Pennsylvania against these assignees, who pleaded to the jurisdiction of the court.

The principle is well settled that where two or more tribunals have a concurrent jurisdiction over the same subject matter and the parties, a suit commenced in any one of them may be pleaded in abatement to an action for the same cause in any other.

But the proceedings in the state court cannot be considered as a suit. The statute was not complied with, and even if it had been, the circuit court would still have had jurisdiction over the matter.

The complainant was a citizen of Kentucky, and the defendants were all citizens of Pennsylvania. The latter, under three assignments bearing date 7 June and the 4 and 6 September, 1841, were trustees of the Bank of the United States, a banking institution incorporated by the Legislature of the State of Pennsylvania by an Act passed on 18 February, 1836.

It appeared that the bank, being unable to meet its liabilities, made an assignment of a part of its property on 1 May, 1841, to certain trustees, to secure the payment of sundry post notes held by certain banks of the City and County of Philadelphia.

Afterwards, on 7 June, 1841, it made another assignment of a portion of its property to the defendants Bacon, Symington, and Robins in trust to secure the payment of its bank notes and deposits. Subsequently, two other assignments were made by the bank to the defendants Robertson, Bayard, Newbold, Cope, and Taylor, in trust for the payment of its debts generally, the first of which was executed on 4 and the other on 6 September, 1841. These several assignments were duly recorded, and the trustees accepted and proceeded to minister the trusts.

The bill and amended bill, after setting forth the chartering

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of the bank, and the assignment of its property to the defendants in trust, alleged that on 6 September, 1841, one George Beach, a citizen of Pennsylvania, recovered a judgment in the District Court for the City and County of Philadelphia, against the said bank, for the sum of \$53,688.66, besides interest and costs; that this judgment was founded on promissory notes of said bank, called post notes. That subsequently the said George Beach, in a suit on said judgment, in the Commercial Court of New Orleans, recovered a judgment for the sum of \$53,688.66, with interest thereon and costs; on which the sum of \$4,075 was paid; and that the residue of both said judgments remains unpaid. The bill then alleged, that through several mesne assignments the complainant became invested with all right under said judgments; that the debt due is provided for in said assignments, but that the trustees have refused to pay any part thereof; and that they have kept complainant and other creditors in ignorance of the situation of the trust funds. Prayer for a decree for an account of the trust, for the payment of complainant's debt in full or a distributive share thereof, and for general relief.

The defendants Robertson, Bayard, Newbold, Cope, and Taylor pleaded as follows:

"That the said corporation mentioned in said complainant's bill, *viz.*, the President, Directors, and Company of the Bank of the United States, incorporated

by the State of Pennsylvania, and having its banking house and chief place of business in the City of Philadelphia, did, on the fourth and sixth days of September, in the year one thousand eight hundred and forty-one, execute and deliver to these defendants assignments and transfers of certain property upon trusts therein particularly set forth -- as by reference to copies of said assignments attached hereto, and made by reference part of this their plea, will fully and at large appear; that said assignments, after having been duly proved, were afterwards, to-wit, on the fourth and seventh days of September, A.D. 1841, recorded, according to the statute of Pennsylvania in such case made and provided, in the office for the recording of deeds &c.;, for the City and County of Philadelphia -- the execution of the trusts thereof having been previously accepted by these defendants. And these defendants further aver, that, in accordance with the provisions of the laws of the said State of Pennsylvania, full and complete jurisdiction of and over the said trust fund so conveyed to these defendants, and of and over the execution of the said trusts, and of and over these defendants personally, as trustees as aforesaid, was and is vested in the Court of Common Pleas of the City and County of Philadelphia, which now

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has cognizance of the same, with ample power and authority in said tribunal to enforce the execution of the said trusts, to decide upon the rights of all parties claiming an interest therein, and right and justice fully to administer in the premises; that, in the execution of the trusts aforesaid, and the collection of the assets so assigned to them, these defendants have been governed by the laws of Pennsylvania, and, among other things, by certain laws of the said state, by which they have been compelled to accept and receive from their debtors, in payment of debts due to the said bank or to the said trustees, at par, the notes and other evidences of debt issued or created by the said bank; and the defendants further aver, that, having in part executed the trusts so as above committed to them, they did, on the seventh day of January, A.D. 1843, file in the office of the prothonotary of the Court of Common Pleas aforesaid an account, duly verified, of their receipts and disbursements, and of their acts and doings, as trustees as aforesaid, from

the commencement of said trust down to the first day of January, A.D. 1843; and subsequently, to-wit, on the thirteenth day of January, A.D. 1844, they did file a further account in the office aforesaid, and duly verified as aforesaid, of their receipts and disbursements, acts and doings, as aforesaid, down to the first day of January in the year 1844, which said accounts were absolutely confirmed by the said court, agreeably to the laws of the said state; and the defendants further aver that on the seventeenth day of January, 1845, and on the thirteenth day of January, 1846, respectively, they filed additional accounts as aforesaid, in the office aforesaid, showing their receipts and disbursements, acts and doings, aforesaid, down to 1 January, A.D. 1846, which said last-mentioned accounts were referred by the said court to auditors, who have made reports thereon, respectively, to the said court; and the defendants further aver that on 14 January, A.D. 1847, they filed another accounts as aforesaid, showing their administration of said trust down to the first day of January, A.D. 1847, which said last-mentioned account was likewise referred by the said court to auditors, before whom the same is now pending -- as by reference to the records of the said court will fully appear; and these defendants further aver, that, in pursuance of the direction and decree of the said court, they have distributed and paid over large sums of money, being the proceeds of the assets assigned to them as aforesaid, and have likewise, under the direction of the said court, invested large sums of money to await the result of pending litigation, and in all other respects have conformed to the directions of the said court in relation to the trust aforesaid. "

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"All which matters and things these defendants do aver to be true, and plead the same to the whole of the said bill, and humbly demand the judgment of this Honorable Court, whether they ought to be compelled to make answer to the said bill of complaint, and humbly pray to be hence dismissed, with reasonable costs and charges in this behalf most wrongfully sustained."

The other defendants pleaded the same plea in substance, *reddendo singula singulis*.

The cause coming on to be heard on the amended bill and pleas, the judges were divided in opinion on the following points:

"First. Whether the facts stated in the plea to the amended bill filed by John Bacon, Alexander Symington, and Thomas Robins, deprive this Court of jurisdiction of the case, and whether the said plea is a sufficient plea to the plaintiff's bill, and ought to be allowed."

"Second. Whether the facts stated in the plea to the amended bill, filed by the defendants, James Robertson, Richard H. Bayard, James S. Newbold, Herman Cope, and Thomas S. Taylor, deprive this Court of jurisdiction of the case, and whether the said plea is a sufficient plea to the plaintiff's bill, and ought to be allowed."

The following sections of the Act of Assembly of Pennsylvania of 14 June, 1836, were relied on in argument, and are therefore inserted.

"Sec. VII. It shall be lawful for the court of common pleas of the proper county, on the application of any person interested or co-trustee or co-assignee, to issue a citation to any assignee or trustee for the benefit of creditors, whether appointed by any voluntary assignment or in pursuance of the laws relating to insolvent debtors and domestic attachments, requiring such assignee or trustee to appear and exhibit, under oath or affirmation, the accounts of the trust in the said court, within a certain time, to be named in such citation."

"Sec. IX. The several courts of common pleas shall, by a general order, or by such order as the circumstances of any particular case may require, direct the prothonotary of the same court to give notice of the exhibition and filing of every account as aforesaid, during such time, and in such public newspapers, as they shall appoint, setting forth in such notice, that the accounts will be allowed by the courts at a certain time, to be stated in such notice, unless cause be shown why such account should not be allowed."

"Sec. XI. Whenever it shall be made to appear in a court of common pleas, having jurisdiction as aforesaid, that an assignee

or trustee as aforesaid has neglected or refused, when required by law, to file a true and complete inventory, or to give bond with surety, when so required by law, or to file accounts of his trust, or that such assignee or trustee is wasting, neglecting, or mismanaging the trust estate, or is in failing circumstances, or about to remove out of the jurisdiction of the court, in any such case it shall be lawful for such court to issue a citation to such assignee or trustee to appear before the court, at a time to be therein named, to show cause why he should not be dismissed from his trust."

"Sec. XII. On the return of such citation, the court may require such security, or such other and further security from such assignee or trustee, as they may think reasonable, or may proceed at once to dismiss such assignee or trustee from the trust."

"Sec. XIII. The like proceedings may be had whenever it shall be made to appear to such court, that any person who shall have become surety for any assignee or trustee as aforesaid, in any bond, given for the due execution of the trust, is in failing circumstances, or has removed out of this Commonwealth, or signified his intention so to do. "

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

This case comes before us from the Circuit Court of the Eastern District of Pennsylvania, on a certificate of a division of opinion between the judges.

The complainant, who is a citizen of Kentucky, filed his bill against John Bacon and others, assignees of the late Bank of the United States under the charter from the State of Pennsylvania. The bank, being in a failing condition, executed assignments of its assets for the benefit of its creditors, and of certain creditors of the Bank of the United States chartered by Congress.

The complainant represents himself to be a creditor of the late bank, to a large amount, which is shown by judgments recovered in the "district court" for the City and County of Philadelphia, and in the Commercial Court of New Orleans. That on application to the trustees aforesaid, they refused to pay the said judgments or any part of them, although they have funds in their hands or under their control, to pay the debts of the bank &c.;

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The defendants pleaded to the jurisdiction of the court. They admit the trust as alleged, and aver that the assignments were recorded as required by the acts of Pennsylvania, and they aver that the court of common pleas of the City and County of Philadelphia has ample power to enforce the trust, in regard to the rights of all parties claiming an interest therein. That the defendants under those laws, at different periods down to 1 January, 1847, filed their accounts, duly verified, "of their receipts and disbursements, with the prothonotary of the said court," which were sanctioned by the court. That under its direction they have vested large sums of money to await the result of pending litigations. And they submit to the court whether they ought to be compelled to answer.

On the hearing, the judges were opposed in opinion on the following points:

1. Whether the facts stated in the plea to the amended bill filed by John Bacon, Alexander Symington, and Thomas Robins, deprive the court of jurisdiction of the case, and whether the plea to the plaintiff's bill is sufficient and ought to be allowed.
2. Whether the facts stated in the plea to the amended bill filed by the defendants James Robertson, Richard H. Bayard, James S. Newbold, Herman Cope, and Thomas S. Taylor, deprive the court of jurisdiction of the case, and whether the said plea is a sufficient plea to the plaintiff's bill, and ought to be allowed.

There is no principle better settled, than that, where two or more tribunals have a concurrent jurisdiction over the same subject matter and the parties, a suit

commenced in anyone of them may be pleaded in abatement to an action for the same cause in any other. And the question we are now to consider is whether the procedure in the court of common pleas, above stated, under the special acts of Pennsylvania, abates the suit of the plaintiff.

Can the proceeding stated in the plea be considered a suit? The revised act of Pennsylvania, of 14 June, 1836, entitled, "An act relating to assignees for the benefit of creditors and other trustees," requires in the first six sections the assignment to be recorded in thirty days, and the assignment being voluntary, "the assignees shall file an inventory or schedule of the estate or effects so assigned, which shall be sworn to," on which it is made the duty of the court to appoint appraisers, who shall return an inventory and appraisal, on the return of which the assignees are required to give bond

"to the Commonwealth, that they will in all things comply with the provisions of the act of assembly, and shall faithfully execute the

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trust confided to them"

&c.; The defendants aver,

"that having in part executed the trust so as above committed to them, they did, on 7 January, 1843, file in the office of the prothonotary of the court of common pleas aforesaid an account, duly verified, of their receipts and disbursements,"

&c.; And several other and similar returns are averred to have been made.

By the seventh section of the act, the court is authorized, on the application of any person interested, to issue a citation to any assignee or trustee for the benefit of creditors, whether appointed by a voluntary assignment or in pursuance of the laws relating to insolvent debtors &c.;, requiring him "to appear and exhibit, under oath or affirmation, the accounts of the trust in the said court," &c.; The ninth section authorizes the court to give notice by publication when the accounts will be acted on that objections to them may be made. And by the eleventh section,

where a trustee has neglected or refused, when required by law, to file a true and complete inventory or to give bond with surety when so required by law, or to file the accounts of his trust, "it shall be lawful for the court" of common pleas "to issue a citation &c.;, to show cause why he should not be dismissed."

Now it does not appear from the plea that the assignees ever filed the inventory of the assets in their hands with the prothonotary of the court, as required by the first section, and it would seem that not only the inventory must be filed, where the assignment is voluntary, to give jurisdiction to the court, but also that it must be sworn to, an appraisement of the trust property made and returned, and bond given by the assignees. This is a proceeding under a statute, and to bring the case within the statute, every material requirement of the act must be complied with. And if the above requisites have not been observed, it is not perceived how the court could take jurisdiction of the case.

In the plea it is stated that accounts have been filed by the assignees at different times and moneys distributed among the creditors. But how can this give jurisdiction? The court has no evidence of the extent and value of the trust, and no bond of the assignees faithfully to account. If these important steps have been taken, they should have been stated in the plea, as it must show, to be effectual, that the court had jurisdiction of the whole matter. The plea is defective in not setting out the above requirements.

But if the plea had been perfect in this respect, it would not follow that the complainant could not invoke the jurisdiction of the circuit court. He, being a nonresident, has his option

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to bring his suit in that court unless he has submitted or is made a party in some form to the special jurisdiction of the court of common pleas.

It appears from the bill, that the assignees have refused to allow the claim of the plaintiff, or any part of it. To establish this claim as against the assignees, the complainant has a right to sue in the circuit court, which was established chiefly for

the benefit of nonresidents. Not that the claim should thus be established by any novel principle of law or equity, but that his rights might be investigated free from any supposed local prejudice or unconstitutional legislation. On the most liberal construction favorable to the exercise of the special jurisdiction, the rights of the plaintiff, in this respect, could not, against his consent, be drawn into it.

It is difficult to define the character of this procedure under the Pennsylvania law. There being no court of chancery in that state, statutory provision was made for the execution of trusts. The statutes adopt some of the principles of chancery, but do not invest the court with the powers of a court of equity which are necessarily exercised in administering trusts.

It is not strictly a proceeding *in rem*. The proceeding is intended to adjust the rights of debtors and creditors of the bank, beyond the jurisdiction of the State of Pennsylvania. Citizens residing, perhaps, in a majority of the states of the Union, are debtors or creditors of the bank. It is difficult to perceive by what mode of procedure the State of Pennsylvania can obtain and exercise an exclusive jurisdiction over the rights of persons thus situated. From the plea, it does not appear that any notices have been given, or citations issued, as authorized by the statute. Nothing more seems to have been done by the assignees than to file their accounts, have them referred to auditors, and finally sanctioned by the court. Whether this procedure is evidence of a faithful discharge of the trust so far as the accounts have been so adjusted, it is not necessary to inquire. We suppose that it could not be contended, that fraud or collusion might not be shown to avoid the proceeding before any tribunal having jurisdiction.

No suit seems to be pending in the common pleas. The action of the assignees appears to be voluntary, for their own justification, and not in obedience to the order of the court. By the statute, any person interested may, on application to the court, obtain a citation to the assignees to appear and answer. But this is nothing more than the ordinary exercise of a chancery power to compel them to account. And it is only an exercise of jurisdiction over them from the time the bill is filed and a notice served, or the application for a citation is made

on due notice. If no such proceeding is had, the assignees, it would appear, file their accounts or omit to do so at their pleasure.

This is not in the nature of a bankrupt or insolvent procedure. Neither the person nor the property of the assignor is entitled to exemption, under the statute, from the claims of creditors. But in such a proceeding, notice to the creditors and a schedule of debts, as well as assets, are required by law.

Under the laws of Pennsylvania a debtor may assign his property for the benefit of his creditors, giving a preference to some of them over others. This may be done by the common law. The assignment made by the late Bank of the United States specifies different classes of creditors, but none is excluded from the benefits of the assignment.

The assignees admit in their plea that they have vested a large amount of assets to await the determination of certain suits still pending. Suppose they had reduced to possession the whole amount of the assets of the bank and held them ready for distribution; could it be doubted that the complainant would have a right to file his bill in the circuit court, not only to establish his claim against them, but also for a proportionate share of the assets? The circuit court could not enjoin the court of common pleas nor revise its proceedings as on a writ of error, but it could act on the assignees and enforce the rights of the plaintiff against them. The debts due by the bank being ascertained, and the amount of its assets, after the payment of all costs, the equitable distribution would not be difficult.

Not doubting that the complainant may file his bill in the circuit court for the purposes stated against the defendants, we deem it unnecessary at this time to consider questions which may arise in the exercise of the jurisdiction. The questions certified by the circuit court are both answered in the negative.

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 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 1st, that the facts stated in the amended plea to the amended bill filed by John Bacon, Alexander Symington, and Thomas Robins do not deprive

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the said circuit court of jurisdiction of this case; 2d, that the facts stated in the plea to the amended bill filed by the defendants James Robertson, Richard H. Bayard, James S. Newbold, Herman Cope, and Thomas S. Taylor, do not deprive the said circuit court of jurisdiction of this case, and that this opinion renders it unnecessary for this Court to answer the remainder of the questions certified. Whereupon it is now here ordered and adjudged by this Court that it be so certified to the said circuit court.

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