

**Deacon Vs. Oliver**

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**Court :** US Supreme Court

**Decided On :** 1852

**Appeal No. :** 55 U.S. 610

**Appellant :** Deacon

**Respondent :** Oliver

**Judgement :**

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**Deacon v. Oliver**

**55 U.S. (14 How.) 610**

*APPEAL FROM THE CIRCUIT COURT OF THE*

*UNITED STATES FOR THE DISTRICT OF MARYLAND*

## **SYLLABUS**

Under the attachment laws of Maryland, a share in the Baltimore Mexican Company, which had fitted out an expedition under General Mina, was not, in 1827, the subject of an attachment under a judgment, whether such share was

held by the garnishee under a power of attorney to collect the proceeds or under an equitable assignment to secure a debt.

The answers of the garnishee to interrogatories filed were literally correct. He had not in his hands any "funds, evidences of debt, stocks, certificates of stock" belonging to the debtor, nor "any acknowledgment by the Mexican government" on which an attachment could be laid.

The bill was filed by John Deacon, the surviving partner of Baring, Brother & Company, of London, under the following circumstances:

In 1821, Baring, Brother & Company obtained a judgment in the Circuit Court of the United States for the District of Maryland against one Lyde Goodwin for \$60,000 upon a bill of exchange, to be released on payment of \$41,055.58, with interest and costs. Goodwin was at this time the owner of one ninth-share in the Mexican Company, the history of which is given in the report of the case of [Gill v. Oliver's Executors](#), 11 How. 529. This judgment was kept alive until the issuing of the attachment hereafter spoken of in 1826.

On the 19th of July, 1823, the government of Mexico passed a decree declaring that General Mina, amongst other persons, was a benefactor of his country, and on the 28th of June, 1824, another decree acknowledging the debts contracted by the Generals declared to have been benefactors.

On the 11th of January, 1825, Lyde Goodwin addressed a

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letter to Mr. Oliver, which is too long to be inserted, but which was of the following tenor. He states the claim to have been acknowledged by Mexico; that the amount of his original proportion of the claim, exclusive of interest, was twenty thousand dollars; that his object in proposing to assign his interest therein was 1st, to secure to Oliver the sum he already owed him, and 2d to obtain barely the means of support for the present, and that the additional sum he would acquire should not exceed \$2,000.

Between this date and June, 1825, Oliver paid to Goodwin \$2,000, and received an assignment of the share from Brown, the trustee in insolvency of Goodwin.

On 22 March, 1825, the company appointed Oliver their attorney to prosecute the claim and informed him that Goodwin was entitled to a commission of five percent in addition to his one ninth share.

On 28 October, 1826, an attachment under the act of Maryland of 1715 was issued upon the judgment against Goodwin and laid in the hands of Oliver, as garnishee. At the same time, the following interrogatories were filed, which the garnishee was required to answer.

"Interrogatory 1. Had you, at the time of laying the attachment in the above cause, in your hands, or at any other time, and when, any funds, evidences of debt, stocks, certificates of stock, belonging to Lyde Goodwin, or any acknowledgment of debt due by the government of Mexico to the said Lyde Goodwin?"

"2. Did not the said Lyde Goodwin transfer to you some certificate of stock or evidence of debt due by the said Mexican government to Goodwin or some document of that character, and when did such transfer take place?"

"3. Had you not a claim against said Goodwin, secured by a transfer or pledge of some certificate of stock or document of a public character, showing that Goodwin was entitled to receive some funds from the Mexican government? If so, what was the amount of your claim so secured and what was the security; was or was not the balance or remaining credit under your control at the time of laying the attachment? State particularly how your claim was secured."

"4. Do you know any other matter or thing that may be of advantage to the plaintiffs in the above cause? If so, state it as fully as if you were particularly interrogated thereto."

In December, 1827, Oliver filed the following answers:

"1. To the first interrogatory he answers that he had not, at the time of laying the attachment in the above cause in his hands, nor at any other time, any funds,

evidences of debt,

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stocks, or certificates of stocks, belonging to Lyde Goodwin, or any acknowledgment of debt due by the government of Mexico, but that he had a power of attorney signed by said Lyde Goodwin, in conjunction with several other persons, claimants of a debt alleged to be owing by the Mexican government and authorizing him to claim and receive the same for the benefit of said Goodwin's assignees and others."

"2. To the second interrogatory he answers that the said Goodwin did not transfer to him any certificates of stock or evidences of debt due by the Mexican government or documents of that character, unless the before-mentioned power of attorney may be called one."

"3. To the third interrogatory he answers that he had and still has a large claim against said Goodwin for money lent him from time to time; that he is not secured for this debt, and never has been secured, by a transfer or pledge of some certificate of stock, or document of a public character, showing that Goodwin was entitled to receive some funds from the Mexican government, unless the aforesaid power of attorney be deemed such, but which he does not admit it to be."

"4. To the fourth interrogatory he answers that he knows nothing."

On 10 January, 1829, the counsel for the Barings caused the following entry to be made upon the docket relative to the attachment: "Discontinued without costs."

On 30 May, 1829, Oliver obtained from Goodwin the following paper:

"Being indebted to Robert Oliver, of Baltimore, upwards of nine thousand dollars, I hereby assign, transfer, and make over to the said Robert Oliver, in payment of my debt to him, the following objects, which were assigned to him many years ago, to secure the payment of the said debt due by me, to-wit, all my undivided ninth part, and right, title, and interest of every kind whatsoever, in the claim on the government of Mexico for supplies furnished, and advances made, to the late

General Mina, or the proceeds thereof, and which claims are under the control of the said Robert Oliver and his agent, John Mason Jr., now in Mexico; also a claim on a certain Louis Merwin, who died some years ago in Havana. The object and intention of this assignment, is to make a full and complete transfer to the said Robert Oliver of all my right, title, and interest, as aforesaid, for which said Robert Oliver has agreed to balance my account on his books, and to consider the same as satisfactorily settled, and I hereby authorize and order all my agents, or those holding any powers of attorney or instructions from me

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relative to the aforesaid property, to account with the said Robert Oliver for the same, or the proceeds thereof."

"L. GOODWIN"

"Baltimore, May 30, 1829"

"Witness -- JOHN THOMAS"

"I confirm the above agreement. ROBERT OLIVER"

This claim was prosecuted under the treaty between the United States and Mexico, with the following result:

On 11 April, 1850, there were paid to Oliver's executors he having died in 1834 the following sums, being net proceeds:

On account of Goodwin's commissions . . . \$22,143.12

" " " his share . . . . . 35,110.47

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\$57,253.59

In November, 1850, Deacon filed his bill against the executors, alleging that the answers of Oliver were untrue and evasive, by means of which deception the attachment had been discontinued; that at the time when it was laid, Oliver had under his control the evidences of debt due by the Mexican government; that so far from having a mere power of attorney from Goodwin to collect the debt, he had a transfer of the claim for the purpose of security, which, being irrevocable, was, by the laws of Maryland, the subject of an attachment &c.;

The executors of Oliver answered, and upon a hearing of the cause, the circuit court dismissed the bill, when the complainant appealed to this Court.

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MR. JUSTICE GRIER delivered the opinion of the Court.

Without attempting to give a history of the facts of this case, as exhibited in the pleadings and proofs, or noticing all the objections of the equity of the bill, we think there are two of its charges or allegations, on which its whole equity rests, and which the complainant has failed to substantiate.

1. That there were in the hands of Robert Oliver at the time the attachment was laid, any chattels, rights, or credits of Lyde Goodwin, "which were bound by said attachment."

2. That Robert Oliver was guilty of falsehood or fraudulent concealment of facts, in his answers to the interrogatories proposed to him as garnishee in the attachment.

In 1816, and previous to his insolvency, Lyde Goodwin had become a shareholder in the Baltimore Mexican Company, to the extent of one ninth part. This company had furnished means to General Mina to fit out a war-like expedition against Mexico, then a dependency of Spain. The expedition of Mina had failed, and he had perished with it. This transaction of the company was illegal and punishable as a misdemeanor, with fine and imprisonment. The contract was therefore void in law, and could not be the foundation of any debt, nor could the stock thus created be treated in law as a thing of value, and from the uncertainty of its future

prospects, its value in the market was little better. It was merely possible that Mexico, if successful in her struggle for independence, might, at some future day, assume the payment of the debts contracted by Mina, and if, as it was possible, or perhaps probable, that at some day still further in the future the payment may be obtained. Goodwin's title in this possibility or expectancy, or whatever it might be called, was supposed to have passed to Brown, his assignee, under the insolvent act. Afterwards, in 1824, Mexico having achieved her independence, passed a decree promising to acknowledge "the debts that may be proven to have been contracted for the service of the nation by the Generals declared *bene meritos de la patria*, " of whom Mina was one. This renewed the hopes of the company, that possibly something might be recovered hereafter on this pledge of the Mexican government, and Robert Oliver was appointed the attorney on the part of the company to prosecute their claim. Lyde Goodwin,

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being in actual want of the means of subsistence, persuaded Robert Oliver to advance him the sum of two thousand dollars, and take a transfer from Brown, his insolvent trustee of this claim, as security.

In this situation of affairs, the attachment of Baring, Brothers & Co. was served on Robert Oliver, as garnishee of Lyde Goodwin, in 1827. Now it is admitted that Oliver was a creditor of Lyde Goodwin, and not a debtor. His power of attorney put him in possession of nothing which could be attached as the property of Goodwin. The insolvent assignment was supposed to have vested Goodwin's interest in this expectancy in Brown. If it did not do so, as has since been decided, Oliver had no title to Goodwin's claim. And if it did, and if Oliver held it merely as a security for the sum advanced by him, the equitable assignment taken as such security, was his own; it was but an instrument to obtain satisfaction for his debt; it conferred nothing but a right in equity. Whether it was valid or invalid, absolute or defeasible, it did not constitute him a debtor of Lyde Goodwin or put him in possession of any of his credits or effects, so as to subject him to an attachment as Goodwin's garnishee. It was not till after the death of Robert Oliver, and more than ten years after the attachment of complainant was discontinued, that the United States made

the Convention of April, 1839, with Mexico, under which commissioners were appointed, before whom this claim of the Baltimore Company was proved, and acknowledged by Mexico as a just debt. Then, for the first time, this uncertain claim or equity, assumed the form of a credit, and an existence as a legal chose in action. But in that character it never existed in the hands of Robert Oliver. If, at the time the attachment was served on him, the claim of Lyde Goodwin had existed as a debt due him by a citizen of Maryland, and Oliver held an equitable transfer either absolute or defeasible, it is abundantly evident that the proper person to be made garnishee in an attachment, would have been the debtor, not the equitable claimant of the debt. He has but an equity or a bare right, but whatever it is, it is his own, and his claim is in hostility both to the plaintiff and defendant in the attachment.

The whole foundation of the complainant's equity in this bill rests of the averment that the interest of Lyde Goodwin, whatever it was, in this Mexican claim, "was bound by the attachment laid in the hands of Robert Oliver, as garnishee." The Merwin claim not having been assigned till after the attachment was withdrawn, need not be noticed. The decision of this point against the averment of the bill would dispose of the case.

But as we think the charges made in the bill against Robert

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Oliver, of false and fraudulent concealment, have not been sustained, it is due to the memory of one who always sustained a high reputation as a merchant and man of honor to notice this point.

It must be remembered that the purpose of the interrogatories was to ascertain whether Oliver had in his hands any credits or effects of Lyde Goodwin, subject to attachment; and also that Brown, the insolvent assignee of Goodwin, was supposed to have had the title to Goodwin's interest vested in him. The legitimate inquiry was therefore not whether Brown had abused his trust, by selling or mortgaging the trust property for the benefit of Goodwin, or whether Oliver's claim

under the assignee was valid or not. This inquiry was wholly irrelevant in the investigation, under the attachment proceeding. Nor was Oliver bound in that investigation to make any disclosure of the strength or weakness of his own title, which was hostile to that of the plaintiff. The discovery sought, was not of Oliver's equities, but of Goodwin's assets. Oliver's answers to the interrogatories were drawn, no doubt by learned counsel, fully aware of the nature of the proceedings, and the rights of the parties under them. The answers were strictly true to the letter. The garnishee had not in his hands, "any funds, evidences of debt, stocks, certificates of stock, belonging to Lyde Goodwin, nor any acknowledgment by the Mexican government to said Lyde Goodwin," on which the attachment could be laid. What claims or securities he himself had as a creditor of Goodwin, the plaintiff in that proceeding had no right to inquire, nor was Oliver bound to answer. If he had nothing which the plaintiff could attach, it was no fraud on plaintiff to keep his own counsel and make no disclosure as to the nature of his own securities.

The decree of the circuit court is therefore

*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 District of Maryland, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, 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.