Early Vs. Rogers

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Court : US Supreme Court

Decided On : 1853

Appeal No. : 57 U.S. 599

Appellant : Early

Respondent : Rogers

Judgement :

Early v. Rogers - 57 U.S. 599 (1853)
U.S. Supreme Court Early v. Rogers, 57 U.S. 16 How. 599 599 (1853)

Early v. Rogers

57 U.S. (16 How.) 599

ERROR TO THE DISTRICT COURT OF THE UNITED

STATES FOR THE WESTERN DISTRICT OF VIRGINIA

SYLLABUS

Where a controverted case was, by agreement of the parties, entered settled, and the terms of settlement were that the debtor should pay by a limited day, and the creditor agreed to receive a less sum than that for which he had obtained a

judgment, and the debtor failed to pay on the day limited, the original judgment became revived in full force.

The original judgment having omitted to name interest, and this Court having affirmed the judgment as it stood, it was proper for the court below to issue an execution for the amount of the judgment and costs, leaving out interest.

Where the debtor alleged that process of attachment had been laid in his hands as garnishee attaching the debt which he owed to the creditor in question, and moved the court to stay execution until the rights of the parties could be settled in the state court which had issued the attachment, and the court refused so to do, this refusal is not the subject of review by this Court. The motion was addressed to the discretion of the court below, which will take care that no injustice shall be done to any party.

This Court expresses no opinion at present upon the two points, namely:

1. Whether an attachment from a state court can obstruct the collection of a debt by the process of the courts of the United States, or

2. Whether a writ of error was the proper mode of bringing the present question before this Court.

Page 57 U. S. 600

On the 29th of June, 1849, John Rogers, Junior, and Joseph Rogers, of Cincinnati, and citizens of the State of Ohio, survivors of the firm of Rogers & Brothers, the deceased partner of which was Alfred Rogers, late of St. Louis, in Missouri, sued Samuel H. Early in the District Court of the United States for the Western District of Virginia.

Early filed a plea in abatement setting forth certain writs of foreign attachment against Rogers and Rogers as nonresident defendants and against himself and others as home defendants. This plea was afterwards withdrawn and the general issue pleaded.

At September term, 1850, the cause came on for trial, when a verdict was found for the plaintiffs in the sum of $12,115, on which verdict the following judgment was entered:

" *Judgment.* Came again the parties by their attorneys, and thereupon came also the jury empanelled and sworn in this cause, in pursuance of their adjournment, and having retired to their chamber, after some hours returned into court, and upon their oaths do say, that they find the issues for the plaintiffs, and assess their damages to twelve thousand one hundred and fifteen dollars. Whereupon the defendant moved the court to set aside the said verdict, and award him a new trial in the premises; which motion, being argued and considered, is overruled. Therefore it is considered by the court that the plaintiffs recover against the defendant the damages aforesaid, in the form aforesaid ascertained, and their costs about their suit by them in this behalf expended, and the said defendant in mercy &c.;"

A bill of exceptions having been taken by Early, the case was brought up to this Court.

At December term, 1851, the case was entered "settled" upon the docket of this Court, the following agreement filed, and judgment entered, namely:

" *Agreement.* In order to put an end to the litigation between the above parties, and as a compromise, the matters in difference between them, that said Samuel H. Early shall pay to the said John Rogers and Joseph Rogers, between this and the first day of September, next, the sum of ten thousand dollars, which sum of ten thousand dollars the said John Rogers and Joseph Rogers agree to receive of the said Samuel H. Early in full satisfaction and discharge of the original judgment entered against the said Early for the sum of about twelve thousand five hundred dollars, in said District Court of the United States for the Western District of Virginia, and in full satisfaction and discharge of all claims and demands which said John Rogers and Joseph Rogers held against said Early in any account arising out of the dealings on which said litigation is founded. "

"And it is further agreed that the original judgment rendered in said District Court of the United States for the Western District of Virginia, and which is taken up to the Supreme Court of the United States on a writ of error, which is now pending in that court, may be entered affirmed in said Supreme Court at its present session, subject to the above agreement -- that is, the judgment, although affirmed, shall not be obligatory for more than the above sum of ten thousand dollars, to be paid as aforesaid, and as soon as that sum is paid, the said judgment shall be entered satisfied provided the amount is paid on or before the said first day of September next. Costs to be paid by Early."

"May 18, 1852."

"SAMUEL H. EARLY"

"By CHARLES Fox, his attorney"

"JOHN ROGERS"

"JOSEPH ROGERS"

"By JAMES F. MELINE, their attorney"

ORDER

"On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed, with costs, in conformity to the preceding stipulations, and that the said plaintiffs recover against the said defendant, Samuel H. Early, one hundred and twenty-nine dollars and fifty-two cents for their costs herein expended, and have execution therefor."

"Upon the going down of the mandate an execution was issued by the district court, in January, 1853, as follows: "

Amount of judgment. $12,115.00

Costs in district court 246.56

Interest from the 7th of December, 1850, the date

of the writ of error issued by the Supreme Court,

to the 7th of December, 1851, date of the mandate . . 741.69

Costs in supreme court. 129.52

Cost of writ of execution 3.37

"In April, 1853, a motion was made by Rogers to amend the judgment for $12,115, by adding 'with interest till paid,' but this motion was overruled."

"At the same term, and on the motion of Samuel H. Early, a rule was awarded him returnable here forthwith against John Rogers, Jr., and Joseph H. Rogers, requiring them to show cause why the execution heretofore sued out on the mandate of the Supreme Court of the United States, awarded on a judgment of the said Supreme Court in favor of said John and Joseph

Page 57 U. S. 602

Rogers against said Samuel H. Early, which execution bears date of the 11th day of January, 1853, and was returnable at March rules, 1853, shall not be quashed. And also to show cause why execution on the said judgment of the said Supreme Court should not be limited to the sum of ten thousand dollars, with interest thereon from the 1st day of September, 1852, and the costs; and also why the same shall not be stayed until the further order of the court, on account of certain attachments and suggestions."

"Whereupon the said John Rogers, Jr., and Joseph H. Rogers appeared in answer to the said rule, and the evidence and arguments of counsel being heard, it is considered by the court that the said execution be quashed, but that the said John Rogers, Jr., and Joseph H. Rogers be allowed to sue out their execution against

the said Early for the sum of $12,115, and $246.56 costs of the judgment in this Court, and $129.52, the costs in the Supreme Court aforesaid, but without interest, and without damages on said sums."

" *Mem.* -- That on the trial of the said rule, the said Samuel H. Early tendered a bill of exceptions to opinions of the court delivered on the said trial, in the following words and figures, to-wit: "

" *Bill of exceptions.* -- The bill of exceptions contained eight records of cases of attachments, and concluded as follows: "

"Whereupon, on consideration of said rules to show cause why the execution should not be limited to the sum of $10,000, principal of said judgment &c.; and why execution should not be stayed &c.; the court was of opinion to discharge and disallow each of said rules, which was done accordingly; to each of which opinions and judgments of the court the defendant, Early, by his counsel, excepts, and prays that then his exceptions may be signed, sealed, and reserved to him."

"JOHN W. BROCKENBROUGH [SEAL]"

Page 57 U. S. 607

MR. JUSTICE CAMPBELL delivered the opinion of the Court.

The defendants, Rogers & Co on the 27th of May, 1852, recovered in this Court against the plaintiff a judgment, in the following words:

"In order to put an end to the litigation between the above parties and as a compromise the matters in difference between them, that said Samuel H. Early shall pay to the said John Rogers and Joseph Rogers, between this and the first day of September next, the sum of ten thousand dollars, which sum of ten thousand dollars the said John Rogers and Joseph Rogers agree to receive of the said Samuel H. Early in full satisfaction and discharge of the original judgment entered against the said Early for the sum of about $12,500, in said District Court

of the United States, for the Western District of Virginia, and in full satisfaction and discharge of all claims and demands which said John Rogers and Joseph Rogers held against said Early in any account arising out of the dealings on which said litigation is founded."

"And it is further agreed, that the original judgment rendered in said District Court of the United States for the Western

Page 57 U. S. 608

District of Virginia, and which is taken up to the Supreme Court of the United States on a writ of error, which is now pending in that court, may be entered affirmed in said supreme court at its present session, subject to the above agreement; that is, the judgment, although affirmed, shall not be obligatory for more than the above sum of ten thousand dollars, to be paid as aforesaid; and as soon as that sum is paid, the said judgment shall be entered satisfied, provided the amount is paid on or before the said first day of September next. Costs to be paid by Early."

"May 18th, 1852."

"SAMUEL H. EARLY"

"By CHARLES Fox, his attorney"

"JOHN ROGERS"

"JOSEPH ROGERS"

"By JAMES F. MELINE, their attorney"

"On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said district court in this cause be, and the same is hereby affirmed, with costs, in conformity to the preceding stipulations; and that the said plaintiffs recover against the said defendant, Samuel H. Early, one hundred and twenty-nine dollars and fifty-two cents for their costs herein expended, and have

execution therefor."

"May 27, _____."

The mandate of this Court was issued in October, 1852, and spread upon the records of the District Court for the Western District of Virginia. In January, 1853, an execution issued returnable to the March rules of that year. At the April term of that court, the plaintiff, Early, obtained a rule against Rogers & Co. requiring them to show cause why the execution so sued out should not be quashed and also why execution on the said judgment of the said Supreme Court should not be limited to the sum of ten thousand dollars, with interest thereon, from the 1st day of September, 1852, and the costs, and also why the same shall not be stayed until the further order of the Court on account of certain attachments and suggestions. Whereupon the Court ordered the execution to be quashed, but that the said Rogers & Co. be allowed to sue out their execution against said Early for the principal sum of $12,115, with costs, but without interest or damages.

The writ of error has been taken to bring this order awarding the execution to this Court. We think the district judge interpreted the agreement of the parties and the judgment of this Court upon it correctly. The parties made the reduction of the judgment to ten thousand dollars dependent upon a condition

Page 57 U. S. 609

which has not been fulfilled. The plaintiff in error had obliged himself to comply with this condition, or to lose his claim for a deduction. We think the award of execution, for the amount contained in the order, was proper.

The motion to stay the execution, founded upon the fact that creditors of Rogers & Co. had attached this debt, by service of garnishment on the plaintiff in the state courts, was addressed to the legal discretion of the district court, and its judgment is not revisable by this Court.

The mere levy of an attachment upon an existing debt by a creditor does not authorize the garnishee to claim an exemption from the pursuit of his creditor. The

attachment acts make no such provision for his benefit. It is the duty of the court wherein the suit against the garnishee by his creditor may be pending, upon a proper representation of the facts, to take measures that no injustice shall grow out of the double vexation. The court should ascertain if the attachment is prosecuted for a *bona fide* debt, without collusion with the debtor, for an amount corresponding to the debt, that no mischief to the security of the debt will follow from a delay, and such other facts as may be necessary for the protection and security of the creditor. An order of the court to suspend, or to delay the creditor's suit, or his execution in whole or for a part, could be then made upon such conditions as would do no wrong to anyone.

It is apparent that such inquiries are proper only for the court of original jurisdiction, in the exercise of the equity powers over proceedings and suitors before it, with the view to fulfill its great duty of administering justice in every case. We do not perceive in this record evidence that the district judge has exercised his discretion unwisely.

We do not express any opinion upon the questions whether a writ of error was the proper remedy to bring this order before us, nor whether attachments could be levied from the state court upon a judgment or claim in the course of collection in the courts of the United States. Accepting the case as it has been made by the parties, and has been argued at the bar, our conclusion is there is no error in the record, and the judgment is

Affirmed.

ORDER

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Virginia, and was argued by counsel. O n consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said district court in this cause be, and the same is hereby affirmed with costs.