

Green's Administratrix Vs. Creighton

Green's Administratrix Vs. Creighton

SooperKanoon Citation : sooperkanoon.com/80906

Court : US Supreme Court

Decided On : 1859

Appeal No. : 64 U.S. 90

Appellant : Green's Administratrix

Respondent : Creighton

Judgement :

Green's Administratrix v. Creighton - 64 U.S. 90 (1859)

U.S. Supreme Court Green's Administratrix v. Creighton, 64 U.S. 23 How. 90 90 (1859)

Green's Administratrix v. Creighton

64 U.S. (23 How.) 90

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

SYLLABUS

The courts of the United States, as courts of equity, have jurisdiction over executors and administrators where the parties to the suit are citizens of different

states, and this jurisdiction is not barred by subsequent proceedings in insolvency in the probate court of a state.

In such a case, the courts may interpose in favor of a foreign creditor, to arrest the distribution of any surplus of the estate of a decedent among the heirs.

Although at law a creditor cannot sue the surety upon an administration bond until he has obtained a judgment against the administrator, yet it is not so in equity, and in the present case, where the original debtor and his surety are both dead, insolvent, and a portion of the assets of the estate of the latter can be traced to the possession of his administrator and his surety, the power of a court of equity is required to call for a discovery of the amount had nature of the assets in hand.

Page 64 U. S. 91

The bill was originally filed by Daniel Green, a citizen of the State of Arkansas, against Fletcher Creighton and Jonathan McCaleb. Whilst the proceedings were pending, McCaleb died, and a bill of revivor was filed against Fletcher Creighton, his executor.

In 1836, Wheeler C. Green died in Mississippi intestate and without issue. His personal representatives were Daniel Green, Reuben Green, and Sally Smith. In 1837, the latter two conveyed their interest in the estate to Daniel Green, who thus became the sole claimant.

In October, 1836, letters of administration were granted to Albert Tunstall, who gave as sureties upon his bond, Amos Whiting, George W. Summers, and Eli West.

In 1837, Whiting died, and letters of administration upon his estate were granted to his widow, Maria L. Whiting, and George Lake. In 1839, Maria intermarried with J. M. Rhodes, who thereupon became administrator of said Whiting in right of his wife.

In March, 1839, Green instituted proceedings against Tunstall, as administrator, in the Probate Court of Claiborne County, and at June Term, 1841, obtained a decree for \$61,194.76, and it was further ordered that the administration bond should be put in suit in any court having cognizance of the matter.

So far, Green's remedy was against Tunstall personally and those who represented Whiting, the surety upon his bond.

In October, 1841, Lake and Rhodes and wife were removed from the administration by the probate court, and Fletcher Creighton was appointed administrator *de bonis non* of Whiting, who gave bond in the penalty of \$100,000, with Jonathan McCaleb as surety.

Green had therefore to look to Tunstall personally, and Creighton as the administrator of Whiting, and McCaleb as the surety of Creighton. The bill alleged that a large amount of assets of the estate of Whiting came into the hands of Creighton.

Page 64 U. S. 92

In August, 1843, Tunstall died insolvent, without having paid any part of the money which he had been decreed to pay by the probate court.

The bill stated that a large amount of the assets in the hands of Creighton were at interest with McCaleb, his surety.

In 1844, Creighton, on citation for that purpose, made another and further administration bond, with Jonathan McCaleb as his surety, in the penalty of one hundred thousand dollars.

In 1848, Green filed his bill against Creighton and McCaleb. The prayer of the bill was that the claim of the complainant against the estate of Amos Whiting, as surety of Tunstall, who administered on the estate of Wheeler C. Green, may be established by decree of this Court, and against said Creighton, in his capacity as administrator *de bonis non* of said estate, to the amount of the liability of said

Amos, for and on account of said Albert Tunstall, as administrator of W. C. Green. Also, that said Creighton and Jonathan McCaleb may admit assets in the possession of Creighton sufficient to pay the claim of complainant, or set forth in his answer a full account of all the assets &c.;, of the estate of said Amos Whiting, which have come to the hands or knowledge of said Creighton, or of any other person within his knowledge.

That said Creighton may be decreed to pay to complainant such sums of money as may be decreed against the estate of Amos Whiting, or against said Creighton in his character as administrator *de bonis non*, if sufficient assets shall be found in his hands for that purpose, and if not, then for such amount as said Creighton shall be found liable for; and in case said Creighton shall not be able to pay such sum or sums on account of said insolvency, then that said Jonathan McCaleb may be decreed, as his surety, to pay it for him. The bill concludes with the general prayer for relief.

The defendants demurred to this bill, but the demurrer was overruled and they were required to answer. Answers were accordingly put in which entered into the merits of the case, but as the opinion of this Court did not touch upon that branch of the subject, it is unnecessary to do so in this report.

Page 64 U. S. 93

One part of the answer must be inserted because it raises one of the questions decided by this Court, *viz.*, the pendency of the proceedings in insolvency.

Further answering, these defendants aver that the estate of the said Amos Whiting was reported to be insolvent to the March term, A.D. 1841, of the Probate Court of Claiborne County, and was then so declared by said court, and commissioners appointed to receive and audit claims against the said estate; and that, by reason of various delays in relation thereto, the same still remains open for the proof of claims; and these defendants insist that the complainant is bound to make out his claim in the probate court in the manner required by the laws of the state of Mississippi, and has no right to maintain this suit to establish said claim against

the estate of Whiting; and they pray that they may be allowed to rely on the same as a plea in bar to said bill; and they further insist that, in any event, the complainants can only be entitled to such a dividend upon his claim as the estate of said Whiting may pay.

This cause having come on to be heard at the May term, 1855, of said court, and the same having been argued and submitted, on the nineteenth day of May, 1855, on final hearing on bill, bill of revivor, answers to original bill and bill of revivor, exhibits, and proofs, and the same having been taken under advisement by his honor S. J. Gholson, the judge presiding on said final hearing, and the court, being now sufficiently advised in the premises, doth see fit to order, adjudge, and decree, and it is accordingly so ordered, adjudged, and decreed, that said bill and bill of revivor be and the same is hereby dismissed, and that the complainant pay the costs to be taxed, ordered, adjudged, and decreed, on this, the twenty-sixth day of January, 1856.

Page 64 U. S. 104

MR. JUSTICE CAMPBELL delivered the opinion of the Court.

The intestate of the plaintiff, as an heir of Wheeler Green, deceased, and claiming, by assignment of the remaining heirs, the entire estate, filed this bill against the defendant, in his capacity of administrator of Amos Whiting, deceased, and of executor of the will of Jonathan McCaleb. He states that Albert Tunstall became the administrator of the estate of Wheeler Green by the appointment of the Court of Probate of Claiborne County, Mississippi, in 1836; that he gave bond for the faithful performance of his duties, with Amos Whiting as his surety; that Tunstall received a large amount of property belonging to the estate, and committed a devastavit; that in the year 1841, his intestate summoned Tunstall before the probate court to make an account, and upon that accounting he was found to be indebted to him, as heir, sixty-one thousand one hundred and ninety-four 76/100 dollars; which sum he was required to pay by the decree of the court, and authority was given to prosecute a suit on the administration bond. The bill avers that

Tunstall and Whiting, his surety, are both dead, and that all of his other sureties are insolvent. It charges that the defendant, Creighton, as administrator of Whiting, has assets in his hands for administration, and that a portion of the assets is in the hands of McCaleb, who is the surety of Creighton on his bond to the probate court, as administrator of Whiting.

The object of the bill is to establish the claim of the intestate and his representative, arising from the judgment against

Page 64 U. S. 105

Tunstall and the breach of his administration bond, on which Whiting is a surety, against the administrator of Whiting and his surety, and to obtain satisfaction from them to the extent of the assets in their hands belonging to that estate, and for this purpose they seek a discovery of the assets, and account and payment.

The defendants appeared to the bill, and allege that the estate of Whiting has been regularly administered, and that returns have been made to the Probate court of Claiborne County, Mississippi, of whatever property came to the hands of the administrator, Creighton, whose character as administrator is admitted, and that he was then engaged in administering the estate under the laws of Mississippi; that the estate had been reported to the probate court as insolvent several years before this suit was instituted, and that commissioners had been appointed by that court to receive and credit the claims; which commission was still open for the proof of claims. They contest the validity of the judgment recovered against Tunstall, and the truth of the account preferred against them, and deny the jurisdiction of the circuit court to entertain this bill. The connection of McCaleb with the bond of Creighton is admitted, and also that a portion of the money of the estate of Whiting had been deposited with or lent to him. Upon the hearing of the cause on the pleadings and proofs, the bill was dismissed for want of jurisdiction, and by the agreement of the parties the record has been made up so as to present that question only. None other will therefore be considered. In the organization of the courts of the United States, the remedies at common law and in equity have been distinguished, and the jurisdiction in equity is confided to the

circuit courts, to be exercised uniformly through the United States, and does not receive any modification from the legislation of the states, or the practice of their courts having similar powers. [*Livingston v. Story*](#), 9 Pet. 632.

The Judiciary Act of 1789 conferred upon the circuit courts authority

"to take cognizance, concurrent with the courts of the several states, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive

Page 64 U. S. 106

of costs, the sum or value of five hundred dollars, and . . . the suit is between a citizen of the state where the suit is brought, and a citizen of another state."

The questions presented for inquiry in this suit are whether the subject of the suit is properly cognizable in a court of equity and whether any other court has previously acquired exclusive control of it. The court has jurisdiction of the parties. In the court of chancery, executors and administrators are considered as trustees, and that court exercises original jurisdiction over them in favor of creditors, legatees, and heirs in reference to the proper execution of their trust. A single creditor has been allowed to sue for his demand in equity, and obtain a decree for payment out of the personal estate without taking a general account of the testator's debts. *Attorney General v. Cornthwaite*, 2 Cox 43; Adams Eq. 257. And the existence of this jurisdiction has been acknowledged in this Court and in several of the courts of chancery in the states. [*Hagan v. Walker*](#), 14 How. 29; *Pharis v. Leachman*, 20 Ala. 663; *Spottswood v. Dandridge*, 4 Munf. 289. The answer of the defendant contains an assertion that, prior to the filing of the bill, the estate of Whiting was reported to the Probate Court of Claiborne County as insolvent, and thereupon that court had appointed commissioners to audit the claims that might be presented and proved, as preparatory to a final settlement, and that the commission was still open for the exhibition of claims.

But of this statement there is no sufficient proof. Neither the report nor any decretal order founded on it is contained in the record, and the proceedings

referring to one are of a date subsequent to the filing of the bill.

The question arises, then, whether the fact of the pendency of proceedings in insolvency in the probate court will oust the jurisdiction of the circuit court of the United States. In [Suydam v. Brodnax](#), 14 Pet. 67, a similar question was presented. A plea in abatement was interposed in the circuit court in Alabama, in an action at law against administrators, to the effect that the decedent's estate had been reported as insolvent to a court of probate, and that jurisdiction over the

Page 64 U. S. 107

persons interested and the estate had been taken in that court. This Court declared that the eleventh section of the act to establish the judicial courts of the United States carries out the constitutional right of a citizen of one state to sue a citizen of another state in the circuit court of the United States. "It was certainly intended," say the court,

"to give to suitors having a right to sue in the circuit court remedies coextensive with those rights. These remedies would not be so, if any proceedings under an act of a state legislature to which a plaintiff was not a party, exempting a person of such state from suit, could be pleaded to abate a suit in the circuit court."

In [Williams v. Benedict](#), 8 How. 107, this Court decided that a judgment creditor in a court of the United States could not obtain an execution and levy upon the property of an estate legally reported as insolvent in the State of Mississippi to the probate court, and which was in the course of administration in that court. The court expressly reserve the question as to the right of a state to compel foreign creditors, in all cases, to seek their remedies against the estates of decedents in the state courts alone, to the exclusion of the jurisdiction of the courts of the United States.

The cases of [Peall v. Phipps](#), 14 How. 368, and [Bank of Tennessee v. Horn](#), 17 How. 157, are to the same effect.

The case of the *Union Bank v. Jolly*, 18 How. 503, was that of a judgment creditor who recovered a judgment against administrators, who subsequently reported the estate of their decedent insolvent. After administering the estate in the probate court, it was ascertained that there was a surplus in their hands. The creditor had not made himself a party to the settlement in the probate court; and the administrators contended that his claim was barred.

This was a suit in Mississippi. This Court determined that the creditor had a lien upon the assets thus situated.

Thus it will be seen that under the decisions of this Court, a foreign creditor may establish his debt in the courts of the United States against the representatives of a decedent notwithstanding the local laws relative to the administration and

Page 64 U. S. 108

settlement of insolvent estates, and that the court will interpose to arrest the distribution of any surplus among the heirs. What measures the courts of the United States may take to secure the equality of such creditors in the distribution of the assets, as provided in the state laws if any independently of the administration in the Probate courts, cannot be considered until a case shall be presented to this Court.

The remaining question to be considered is whether the debt described in the bill entitles a plaintiff to come into a court of equity, under the circumstances. It is well settled that no one can proceed against the sureties on an administration bond at law, who has not recovered a judgment against the administrator. 5 How.Miss.R. 638; 6 Port. 393. But this rule is not founded upon the supposition that there is no breach of the bond until a judgment is actually obtained. The duty of the administrator arises to pay the debts when their existence is discovered; and the bond is forfeited when that duty is disregarded. The jurisdiction of a court of equity to enforce the bond arises from its jurisdiction over administrators, its disposition to prevent multiplicity of suits, and its power to adapt its decrees to the substantial justice of the case. *Moore v. Walter's Heirs*, 1 Marsh. 488; *Moore v. Armstrong*,

9 Porter 697; *Carew v. Mowatt*, 2 Ed.Ch. 57.

In this case, the original debtor, Tunstall, has died insolvent. Whiting, his surety, has died insolvent. A portion of the assets belonging to the estate of the latter is in the hands of the surety of this administrator. A discovery of the amount and nature of the assets in hand, and their application to the payment of the debt, are required, if they are subject to the application.

We conclude that the circuit court was authorized to entertain this suit, and that the decree dismissing the bill is erroneous.

Decree reversed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com