Chittenden Vs. Brewster

Chittenden Vs. Brewster

SooperKanoon Citation : sooperkanoon.com/81234

Court : US Supreme Court

Decided On : 1864

Appeal No. : 69 U.S. 191

Appellant : Chittenden

Respondent : Brewster

Judgement :

Chittenden v. Brewster - 69 U.S. 191 (1864)
U.S. Supreme Court Chittenden v. Brewster, 69 U.S. 2 Wall. 191 191 (1864)

Chittenden v. Brewster

69 U.S. (2 Wall.) 191

APPEAL FROM THE CIRCUIT COURT FOR

THE NORTHERN DISTRICT OF ILLINOIS

SYLLABUS

1. It is the duty of assignees for the benefit of creditors who have once accepted the trust not only to appear but, so far as the nature of the transaction and the facts and circumstances of the case will admit or warrant, to defend the suit. And if

a federal court is already seized of the question of the validity of the trust, they should set up such pending proceeding against any attempt by parties in a *state* court to bring a decision of the case within its cognizance. If, when the federal court has acquired previous jurisdiction, they submit with a mere appearance, and without any opposition to the jurisdiction of the state court, and pass over to a receiver appointed by it the assets of the trust, they will be held personally liable for them all in the federal court.

2. A party *not* appealing from a decree cannot take advantage of an error committed against himself, as for example that the appellant had omitted to prove certain formal facts averred in his bill and which were prerequisite of his case. But where -- assuming the fact averred but not proved to be true -- a decree given against a party in the face of such want of proof is reversed in his favor, it may be reversed with liberty given to the other side to require him to prove that same fact which the appellee, *when seeking here to maintain the decree,* was not allowed to object that the appellant had failed, below, to prove.

The suit was a creditor's bill filed against a judgment debtor and his assignees, the defendants in the case, to set aside an assignment made by the debtor to hinder and delay creditors. The assignment was made on the 4th of November, 1857, to Brewster and Clark, two of the defendants, and purported to convey to them all the property, real and personal, of the debtor in trust to convert the same into money, either at public or private sale, and pay certain preferred creditors named. The judgment debtor made no defense. The assignees put in a joint answer, and *after requiring the complainants to make proof of their judgments and executions as charged in their bill,* set forth, among other grounds of defense, that after the filing of the bill below, a bill in chancery had been filed against them in one of the state courts in behalf of *other* creditors of the judgment debtor,

Page 69 U. S. 192

praying for the appointment of a receiver to take possession and charge of the property conveyed by the assignment, and that the trusts therein created be carried into effect, and that, upon the filing of the bill in the state court and after

hearing the motion for a receiver, the motion was granted, and that they had afterwards, in pursuance of the order of the state court, transferred and set over to the said receiver, one Mitchell, all the property, real and personal, that had come to their hands.

To this answer a replication was filed, and the parties went to their proofs. There was no evidence that on the application in the state court for a receiver, which was made on the alleged ground of faithless execution of the trust, the assignees had made opposition. They had done nothing but acknowledge service on themselves of the notice of the intended motion for a receiver, employ a solicitor to enter an appearance for them, and to give their assent to the hearing of the motion at the February Term of the court, then at hand. The state court accordingly granted the prayer of the bill before it and appointed a receiver, one Mitchell, in the case. But no fraud was proved nor specifically alleged on the part of the assignees in any part of the proceeding.

The bill below was taken, as confessed, by Brewster, the debtor, and dismissed as to two other defendants, and the court, after hearing the case on the pleadings and proofs, declared the assignment fraudulent and set it aside, and appointed a *receiver,* one Moulton, and directed the judgment debtor to assign and transfer in writing to him all his property, real and personal, and further that Brewster and Clark, the assignees, should assign and transfer in writing to him all the property and effects of every description that came into their hands by the assignment of the 4th of November, 1857, *except such property and effects so assigned to them, which have, since the service of process in this suit, been transferred to Mitchell, the receiver, under the proceedings had in the state court,* and which was set forth in the answer filed by them. From this decree the complainants appealed to this Court, the ground being essentially that the proceeding in

Page 69 U. S. 193

the state court should have been treated as an interference with the federal jurisdiction previously acquired.

In order to understand this question of priority, it is necessary here to say that the bill in *the circuit court* was filed on the *4th of January, 1858;* the subpoena served on the defendants on the next day; and their appearance entered on the 1st of February following. The bill in the *state* court was filed on the *1st of February, 1858,* and the subpoena served on the 20th of the same month. The receiver was appointed afterwards on notice. The evidence did not show that the defendants conveyed the effects of the judgment debtor in their hands to the receiver, but the fact was apparently assumed both by the counsel and the court below, and no point upon it was made by the Court here.

Page 69 U. S. 195

MR. JUSTICE NELSON delivered the opinion of the Court.

It does not appear from the proofs in the case that executions had been issued and returned unsatisfied as averred in the bill, and for the proof of which the answer of defendants called, and it is objected by the counsel for the appellees that this defect is fatal to the right of the complainants to maintain their bill. This would be so if the appellees, against whom the decree was rendered, had appealed from

Page 69 U. S. 196

the same, as in the case of *Jones v. Green.* [Footnote 1] *See also Day v. Washburn.* [Footnote 2] But here the complainants only have appealed, and the rule is settled in the appellate court that a party not appealing cannot take advantage of an error in the decree committed against himself, and also that the party appealing cannot allege error in the decree against the party not appealing. [Footnote 3] If the appellees desired to avail themselves of this error in the decree, they should have brought a cross-appeal. By omitting to do so, they admit the correctness of the decree as to them. The case stands before the appellate tribunal the same as if the error had been waived at the hearing.

This brings the case down to the question as to the effect to be given to the suit in the state court and to the order of that court appointing a receiver and directing the defendants to assign and set over to him all the effects of the judgment debtor in their hands, under his assignment of the 4th of November, 1857.

The bill in the circuit court of the United States to set aside the assignment to these defendants as fraudulent against creditors was first filed, and consequently operated as the first lien upon the effects of Brewster, the judgment debtor.

We agree that the defendants, as bailees and trustees of the property entrusted to their care and management for the benefit of the creditors of Brewster, were responsible only for common or ordinary diligence such as prudent men exercise in respect to their own private affairs. But this degree of diligence the law exacts and the courts of justice are bound to enforce. When, therefore, the bill was filed against them by the judgment creditors in the circuit court of the United States to set aside the assignment as fraudulent, it was their duty, arising out of their acceptance of the trust, to appear and defend the suit, as they have done, and

Page 69 U. S. 197

protect their title to the fund in controversy so far as the nature of the transaction and the facts and circumstances of the case would admit or warrant. Their whole duty appears to have been discharged in this respect, and we perceive no ground of complaint against them. But this duty was equally incumbent upon them in respect to the suit in the state court. They should have appeared and defended that suit, and, in addition to the defense on the merits, that is of their faithful execution of the trust, which was impeached by the bill, they should have set up the pending proceedings against them in the federal court, which tribunal had first acquired jurisdiction over them and over the fund in dispute, and were entitled to deal with it and with all questions growing out of the relations existing of debtor and creditor of the parties concerned. Instead, however, of pursuing this course, no defense, as appears, was set up by the defendants to the suit, no answer filed, nor even opposition made to the motion for the appointment of a receiver. The only part they seem to have taken in the proceedings is, besides acknowledging

service of the notice of the motion for a receiver, the solicitors entered their appearance in the cause and gave consent that the motion might be made at the then February Term of the court. It was at once made, and the receiver appointed and gave the requisite security.

Now, we think, here was a clear omission of duty on the part of the defendants, as trustees and bailees of the property in question, and for which they should have been held personally responsible. They should have appeared and defended the suit in the state court and set up the pending proceedings in the federal court, which was a complete answer to the jurisdiction of the former, and if this defense had been overruled, a remedy existed by a writ of error to this Court under the 25th section of the Judiciary Act.

The court below therefore erred in excepting from the transfer of the effects of the judgment creditors in the hands of the defendants to Moulton, the receiver, the property and effects transferred to Mitchell, under the order of the state court. For this error the decree of the court below must

Page 69 U. S. 198

be reversed and the cause remanded to the court below with directions to proceed on the same in conformity with this opinion; but liberty is given to the defendants to require proof before the court of the issuing of executions and return unsatisfied, as averred in the bill of complaint. [Footnote 4]

Decree, etc., accordingly.

[Footnote 1]

68 U. S. 1 Wall. 330.

[Footnote 2]

65 U. S. 24 How. 355, 65 U. S. 356 .

[Footnote 3]

Kelsey v. Weston, 2 Comstock 505; *Norbury v. Meade,* 3 Bligh 261; *Mapes v. Coffin,* 5 Paige 296; *Idley v. Bowen,* 11 Wendell 227.

[Footnote 4]

Levy v. Arredondo, 12 Pet. 218; *Marine Insurance Company v. Hodgson,* 6 Cranch 206; *Mandeville v. Burt,* 8 Pet. 256-257.