

Nichols Vs. Levy

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Court : US Supreme Court

Decided On : 1866

Appeal No. : 72 U.S. 433

Appellant : Nichols

Respondent : Levy

Judgement :

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Nichols v. Levy

72 U.S. (5 Wall.) 433

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE MIDDLE DISTRICT OF TENNESSEE

SYLLABUS

1. Where a state court, interpreting a statute of its own state which gave such court jurisdiction to subject legal and equitable interests in real estate to the claim of creditors, decided that the statute embraced trusts like one in question (which

judgment creditors were seeking to set aside), and that it exempted the property embraced by the trust from liability to such creditors, this Court followed that construction of the statute and sustained the trust, though they remarked that if the question had been to be treated by them on general principles of jurisprudence, and independently of the state decision on the statute, the judgment would necessarily have been the other way.

2. An estate in vested remainder is liable to debts the same as one in possession. Hence, where creditors seek to subject, by bill in equity, to their claims an estate in such vested remainder, and it is decided that they cannot do it, the matter will be considered as *res adjudicata* if they afterwards try to levy, by execution, on the same property when, by the death of the tenant for life, it has become an estate in possession.

In the above court, James Beal Nichol and John Nichol, Jr.

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filed a bill for an injunction to restrain Levy and thirty-six others, different mercantile houses, from selling, under executions at law which these houses had obtained against them, certain lands in which they, the said J. B. and J. Nichol, were interested, the ground of the bill being that the said lands were not liable to be sold to satisfy the judgments in question. The court refused to grant the injunction, and this appeal was taken.

The questions made in the case were:

1st. Whether the matter of the liability of said lands was not *res adjudicata* in favor of the Nichols in a certain other proceeding hereinafter mentioned in which they were defendants? and

2d. Whether, as an original question, they had any such estate in the lands as was liable to execution at law?

The case was thus:

The appellants were grandsons of one Beal Basley, and having been engaged in mercantile business, and failing in it, had become heavily, if not hopelessly, indebted. Their grandfather, desiring to provide for his grandsons, these young men, but unwilling that his bounty should go simply to pay their debts, executed, in 1849, a deed, conveying certain lands (including one tract of 308 3/8 acres) to one John Nichol, Sr., upon trusts that the trustees should permit the said Beal Basley to occupy and enjoy the lands &c.;, during his life:

"And after his death that the said John Nichol, Sr., will *permit* the said J. B. Nichol and John Nichol, Jr., jointly or in severalty, according to any division into two equal parts that may hereafter be made between them, to *have, possess, use, occupy, and enjoy* the said property, and receive the rents, issues, and profits thereof, *so that* neither the said *property* nor the *rents, issues, and profits thereof shall ever be liable for any of the present now existing debts*, whether due or not due, or *now existing contracts* of the said J. B. Nichol or John Nichol, Jr., or either of them, or to *any encumbrance, liability, or lien that they or either of them or their property are now subject to for said debts or contracts, or by any acts, defaults, or transactions of their own, whereby they*

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may attempt to make the same liable for said debts or contracts, and after the present debts and liabilities of the said J. B. Nichol and John Nichol, Jr., shall have been extinguished and they entirely discharged therefrom, then the said John Nichol, Sr., shall hold said property, and every part thereof, in trust, *to convey* the same to the said J. B. Nichol and John Nichol, Jr., in fee and absolutely, either as tenants in common or in severalty, and in such manner as may be agreed on by and between the said J. B. Nichol and John Nichol, Jr."

John Nichol, Sr., the trustee, died, and the legal estate in the lands descended to his nine children, two of whom were James Beal Nichol and John Nichol, Jr.

Subsequently, and during the lifetime of the grandfather, in August, 1854, *certain* creditors (in number *thirty*) of the two grandsons having obtained judgments

upon debts existing after the conveyance was made, filed bills in chancery against them and the heirs of the deceased trustee, in Tennessee, praying a sale of their interest in the lands so conveyed. These suits were consolidated and tried together. The bills having set forth the deed, judgments, and the case of the creditors on them, concluded:

"From the foregoing statement of facts your honor will readily perceive that said James B. and John Nichol, Jr., are invested with at least a remainder interest in fee in said tract of 308 3/8 acres allotted to them as aforesaid; that the legal title to said tract being in John Nichol, Sr., or his heirs, the same is not subject to execution at law."

The prayer was that the premises being considered, and as the complainants had no remedy at law, the "interest" of the two grandsons Nichol in the property should be sold, and the proceeds applied to the payment of the judgments.

The chancellor decreed that the property could not be thus applied, either under the general jurisdiction of the court, or under an act of the Legislature of Tennessee by which it was sought to render it liable, notwithstanding the terms of the deed. And the Supreme Court of Tennessee affirmed this decree.

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The statute of Tennessee referred to, authorized certain proceedings to subject equitable interests to the payment of judgments obtained against the defendant, at law. It declared:

" *Section 1.* That a bill might be filed"

"to compel the discovery of any bank stock, or other kind of stock, or any property, or thing in action, held in trust for him, and to prevent the transfer of any such stock, property, money, thing in action, or the payment or delivery thereof to the defendant, except where such trust has been created by, or the fund has proceeded from, some person other than the defendant himself, and is declared by will duly recorded, or by deed duly proved and registered."

" *Section 2.* That the court might decree payment of the judgment out of 'any property, stock, money, or things in action, belonging to the defendant or held in trust for him, with the exception above stated, which shall be discovered by the proceedings in chancery.'"

" *Section 4.* That when service could not be made at law, and a judgment obtained, and also where the demand was of a purely equitable nature, a court of equity should have jurisdiction to subject legal and equitable interests in every species of stock and other property, with the exception hereinbefore stated, and also in real estate."

In March, 1861, the two grandsons made partition of the land by deed, and in April, 1860, sold portions of it.

In May, 1860, the grandfather, Beal Basley, died, and immediately thereafter the same thirty judgment creditors above-mentioned, and *seven others, who had not joined in the former proceedings,* caused executions to be levied upon the entire tract of land in question, and it was accordingly advertised for sale. Whereupon in August, 1860, James Beal Nichol, and John Nichol, Jr., the grandsons provided for as above mentioned, filed a bill in the circuit court of the United States, for an injunction to prevent the sale, setting forth the proceedings hereinbefore mentioned by which they contended the creditors were estopped, and also relying upon the exemption of the property, according to the terms and conditions of the trust under which they held.

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MR. JUSTICE SWAYNE delivered the opinion of the Court.

If the determination of this case depended upon the general principles of jurisprudence, the result must necessarily be in favor of the appellees. It is a settled rule of law that the beneficial interest of the *cestui que trust*, whatever it may be, is liable for the payment of his debts. It cannot be so fenced about by inhibitions and restrictions as to secure to it the inconsistent characteristics of right

and enjoyment to the beneficiary and immunity from his creditors. A condition precedent that the provision shall not vest until his debts are paid, and a condition subsequent that it shall be divested and forfeited by his insolvency, with a limitation over to another person, are valid, and the law will give them full effect. Beyond this, protection from the claims of creditors is not allowed to go. [[Footnote 1](#)]

According to these principles, the restrictions in the deed of Beal Basley as to the creditors of the appellants are wholly void.

But the case does not turn upon these considerations.

Two other questions are presented, and our judgment must be determined by their solution.

One of these questions is whether the appellees, who were complainants in the bills filed to reach the interests of the

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appellants in the property in question, are not concluded by the decree rendered in those cases by the Supreme Court of Tennessee. The cases were consolidated in that court, and decided together. The bills were filed in the Chancery Court of Davidson County, and addressed to the presiding chancellor. They contained this averment:

"From the foregoing statement of facts your honor will readily perceive that said James B. and John Nichol, Jr., are invested with at least a remainder interest in fee in said tract of 308 3/8 acres allotted to them as aforesaid; that the legal title to said tract being in John Nichol, St., or his heirs, the same is not subject to execution at law."

Hence the aid of a court of equity was invoked. The prayer of the bills was that the "interest" of the appellants in the property should be sold, and the proceeds applied to the payment of the judgments.

The chancellor decreed against the complainants upon the grounds that the restriction in the trust as to the liability of the property for the debts of James B. and John Nichol was valid; that the creditors could not compel the conveyance of the legal title when the beneficiaries themselves were not in a condition to demand it, and that "the provisions of the deed were within the purview of the act of 1832," and the property thus protected from the claims of the creditors.

The complainants appealed to the supreme court. That court held

"that said property is not liable for such debts and judgments of the complainants, and that the same may not be subjected to the payment and satisfaction of said debts and judgments,"

and the decree of the chancellor was affirmed. As regards the complainants in that case, who are defendants in this, the parties were the same, and the question to be determined was the same. But it is said that Beal Basley was living when that litigation was begun, and dead when this bill was filed. That Basley was living could have made no difference in the result of the former suits, and cannot affect the bar arising from them in this suit. As averred in the bill, the beneficiaries had a vested remainder

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in fee. Their right to the property was as perfect then as it is now. Their estate was an equitable one, but alienable and descendible, and subject to be conveyed by the same instruments as a legal estate. It was not then vested in possession. The time of possession was dependent upon the termination of the life estate of Beal Basley. But this only lessened its value for the time being. Its liability to their creditors was not in the least affected. It is impossible that the Supreme Court of Tennessee should have held otherwise, and the decree have proceeded upon a different view of the subject. The language of the decree repels the suggestion. We cannot give any weight to an objection which assumes as its basis such a reflection upon that enlightened tribunal. The decree as to the property and questions here in controversy is *res judicata*, and it has every element of

conclusiveness as to those who were parties to it.

Several defendants in this suit were not parties to that litigation, and hence are not bound by the decree.

This brings us to examine the second question presented for our consideration. It relates to the effect of the act of 1832, referred to by the chancellor in his decree.

The Supreme Court of Tennessee held that it had no power to subject stocks, choses in actions, or equitable interests, to the payment of judgments at law. The legislature of the state thereupon passed the act in question. [[Footnote 2](#)]

The first section declares that a bill may be filed

"to compel the discovery of any bank stock, or other kind of stock, or any property, or thing in action, held in trust for him [the defendant] and to prevent the transfer of any such stock, property, money, thing in action, or the payment or delivery thereof to the defendant, except where such trust has been created by, or the fund has proceeded from, some person other than the defendant himself, and is declared by will duly recorded, or by deed duly proved and registered."

The second section authorizes the court to decree payment of the judgment out of

"any property, stock, money,

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or things in action, belonging to the defendant or held in trust for him, with the exception above stated, which shall be discovered by the proceedings in chancery."

The fourth section provides that when service cannot be made at law, and a judgment cannot be obtained, and also where the demand is of a purely equitable nature,

"a court of equity shall have jurisdiction to subject legal and equitable interests in every species of stock and other property, with the exception hereinbefore stated,

and also in real estate."

The supreme court of the state decided, in the suits referred to, that this statute embraces trusts of real estate, and that it exempted the property in question from liability to the judgment creditors. There can be no doubt of the power of the legislature to pass the statute. Its wisdom and policy are considerations with which we have nothing to do. Being a local statute and involving a rule of property, we adopt the construction which has been given to it by the highest judicial tribunal of the state.

This is decisive of the case as to those of the appellees who were not parties to the former suits.

The decree of the circuit court is reversed, and the cause will be remanded to that court with directions to enter a decree in conformity to this opinion.

[[Footnote 1](#)]

Graves v. Dolphin, 1 Simon, 66; *Mebane v. Mebane*, 4 Iredell's Eq. 131; *Bank v. Forney*, 2 *id.* 181, 184; *Snowden v. Dales*, 6 Simon 524; *Foley v. Burnell*, 1 Brown's Ch. 247; *Brandon v. Robinson*, 18 Vesey Jr. 429; *Piercy v. Roberts*, 1 Milne & Keene 4; *Dick v. Pitchford*, 1 Devereux & Battell's Eq. 484; 2 Story's Eq. § 974.

[[Footnote 2](#)]

Session laws of 1832, p. 22; *Ewing v. Cantrell*, Meigs 364.

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