Bailey Vs. Glover

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Decided On : 1874

Appeal No. : 88 U.S. 342

Appellant : Bailey

Respondent : Glover

Judgement :

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Bailey v. Glover

88 U.S. (21 Wall.) 342

APPEAL FROM THE CIRCUIT COURT FOR

THE SOUTHERN DISTRICT OF ALABAMA

SYLLABUS

1. The policy of the Bankrupt Law is *speedy* as well as equal distribution of the bankrupt's assets among his creditors, and the one is almost as important as the other. The delays in the inferior courts commented on.

2. Hence, the clause limiting the commencement of actions by and against the assignee to two years after the right of action accrues applies to all judicial contests between the assignee and any person whose interest is adverse to his.

3. But though this clause in terms includes all suits at law or in equity, the general principle applies here that where the action is intended to obtain redress against a fraud concealed by the party, or which from its nature remains secret, the bar does not commence to run until the fraud is discovered.

4. And this doctrine is equally applicable on principle and authority to suits at law as well as in equity.

Bailey, assignee in bankruptcy of Benjamin Glover, and appointed as such December 1, 1869, filed a bill on the 20th of January, 1873 (three years and seven weeks, therefore, after the date of his appointment) against Elenora Glover, wife of the bankrupt, Hugh Weir, his father-in-law, and Nathaniel Glover, his son, to set aside certain conveyances.

The bill alleged that Glover, the bankrupt, owed Winston & Co. $13,580, and that judgment had been obtained against him for that debt; that Glover was a man of fortune -- possessed

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of at least $50,000 in different kinds of property -- and owed no debt but the one just mentioned; that being thus entirely solvent and able to pay that debt, but fraudulently intending to avoid its payment by applying for the benefit of and getting a discharge under the Bankrupt Law, he previously to applying conveyed, without any or upon grossly inadequate considerations, all his estate to the defendants, and then with fraudulent intent filed a petition in voluntary bankruptcy, setting forth that he owed the debt to Winston & Co., that this was the only debt which he did owe, and that he had no property or effects whatever except such as the law exempted from execution.

The bill further alleged that on his petition as aforesaid he was, on the 11th of April, 1870, discharged under the Bankrupt Act, Winston & Co. proving their debt as creditors, and he, the complainant, being appointed assignee in the bankruptcy.

The bill further alleged that the bankrupt and his wife, son, and father-in-law -- these being the already-named defendants in the case -- kept secret their said fraudulent acts and endeavored to conceal them from the knowledge both of the assignee and of the said Winston & Co., whereby both were prevented from obtaining any sufficient knowledge or information thereof until within the last two years, and that even up to the present time they had not been able to obtain full and particular information as to the fraudulent disposition made by the bankrupt of a large part of his property.

It also alleged that the surviving partner of Winston & Co., in December, 1871, filed a petition in the district court against the bankrupt in order to have his discharge set aside for this fraud, but before process could be served on the bankrupt, he died.

These were the material allegations of the bill, and if true they showed, of course, a very clear case of fraudulent conspiracy between the bankrupt and his family connections to defraud the only creditor named in his petition -- a scheme of gross fraud, in short -- concealed by the defendants from

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the knowledge of the assignee and from Winston & Co., against whom the fraud was perpetrated.

The defendants demurred to the bill because the suit was not brought within two years from the appointment of the assignee, and their demurrer was sustained. This appeal was taken from the decree of the court dismissing the bill, and the sole question here was whether on the case made by the bill this decision of the circuit court was right.

The second section of the Bankrupt Act of 1867, under which section the case arose, reads as follows:

"The circuit court shall have concurrent jurisdiction of all suits at law or in equity brought by the assignee against any person claiming an adverse interest, or by such person against the assignee touching the property of the bankrupt transferable to or vested in the assignee; but no suit at law or in equity shall in any case be maintainable by or against such assignee, or by or against any person claiming an adverse interest, touching the property or rights of property aforesaid, in any court whatsoever, unless the same shall be brought *within two years from the time of the cause of action accrued for or against such assignee.* "

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MR. JUSTICE MILLER delivered the opinion of the Court.

Counsel for the appellant argues that the provision of the second section of the Bankrupt Act has no application to the present case because it is not shown that the defendants have set up or asserted any claim to the property now sought to be recovered adverse to that of the assignee. It is rather difficult to see exactly what is meant by this proposition. The suit is brought to be relieved from some supposed claim of right or interest in the property on the part of the defendants. If no such claim exists, it does not stand in the way of complainant, and he does not need the aid of a court of equity to set it aside. If it is intended to argue that until someone asserts in words that he claims a right to property transferred to the assignee by virtue of the act which is adverse to the bankrupt, the statute does not begin to run though such person is in possession of the property, acting as owner, and admitting no other title to it, we think the construction of the proviso entirely too narrow.

This is a statute of limitation. It is precisely like other statutes of limitation, and applies to all judicial contests between the assignee and other persons touching the property or rights of property of the bankrupt transferable to or vested in the assignee, where the interests are adverse and have so existed for more than two

years from the time when the cause of action accrued, for or against the assignee. Such is almost the language in which the provision in expressed in section 5057 of the Revised Statutes.

It is obviously one of the purposes of the Bankrupt Law that there should be a speedy disposition of the bankrupt's assets. This is only second in importance to securing equality of distribution. The act is filled with provisions for quick and summary disposal of questions arising in the progress of the case, without regard to usual modes of trial attended by some necessary delay. Appeals in some instances

must be taken within ten days, and provisions are made to facilitate sales of property, compromises of doubtful claims, and generally for the early discharge of the bankrupt and the speedy settlement of his estate. It is a wise policy, and if those who administer the law could be induced to act upon its spirit, would do much to make the statute more acceptable than it is. But instead of this, the inferior courts are filled with suits by or against assignees, each of whom, as soon as appointed, retains an attorney if property enough comes to his hands to pay one, and then instead of speedy sales, reasonable compromises, and efforts to adjust differences, the estate is wasted in profitless litigation and the fees of the officers who execute the law.

To prevent this as much as possible, Congress has said to the assignee, you shall commence no suit two years after the cause of action has accrued to you, nor shall you be harassed by suits when the cause of action has accrued more than two years against you. Within that time, the estate ought to be nearly settled up and your functions discharged, and we close the door to all litigation not commenced before it has elapsed.

But the appellant relies in this Court upon another proposition which has been very often applied by the courts under proper circumstances in mitigation of the strict letter of general statutes of limitation -- namely that when the object of the suit is to

obtain relief against a fraud, the bar of the statute does not commence to run until the fraud is discovered or becomes known to the party injured by it.

This proposition has been incorporated in different forms in the statutes of many of the states, and presented to the courts under several aspects where there were no such statutes. And while there is unanimity in regard to some of these aspects there is not in regard to others.

In suits in equity where relief is sought on the ground of fraud, the authorities are without conflict in support of the doctrine that where the ignorance of the fraud has been produced by affirmative acts of the guilty party in concealing the facts from the other, the statute will not bar relief

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provided suit is brought within proper time after the discovery of the fraud.

We also think that in suits in equity, the decided weight of authority is in favor of the proposition that where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party. [Footnote 1]

On the question as it arises in actions at law, there is in this country a very decided conflict of authority. Many of the courts hold that the rule is sustained in courts of equity only on the ground that these courts are not bound by the mere force of the statute as courts of common law are, but only as they have adopted its principle as expressing their own rule of applying the doctrine of laches in analogous cases. They therefore make concealed fraud an exception on purely equitable principles. [Footnote 2]

On the other hand, the English courts and the courts of Connecticut, Massachusetts, Pennsylvania, and others of great respectability hold that the doctrine is equally applicable to cases at law. [Footnote 3]

As the case before us is a suit in equity and as the bill contains a distinct allegation that the defendants kept secret and concealed from the parties interested the fraud which is

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sought to be redressed, we might rest this case on what we have said is the undisputed doctrine of the courts of equity, but for the peculiar language of the statute we are considering. We cannot say in regard to this act of limitations that courts of equity are not bound by its terms, for its very words are that "no suit *at law or in equity* shall in any case be maintained . . . unless brought within two years" &c.; It is quite clear that this statute must be held to apply equally by its own force to courts of equity and to courts of law, and if there be an exception to the universality of its language, it must be one which applies under the same state of facts to suits at law as well as to suits in equity.

But we are of opinion, as already stated, that the weight of judicial authority both in this country and in England is in favor of the application of the rule to suits at law as well as in equity. And we are also of opinion that this is founded in a sound and philosophical view of the principles of the statutes of limitation. They were enacted to prevent frauds -- to prevent parties from asserting rights after the lapse of time had destroyed or impaired the evidence which would show that such rights never existed, or had been satisfied, transferred, or extinguished, if they ever did exist. To hold that by concealing a fraud or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure. And we see no reason why this principle should not be as applicable to suits tried on the common law side of the court's calendar as to those on the equity side.

While we might follow the construction of the state courts in this matter, where those statutes governed the case, in construing *this* statute of limitation passed by the Congress of the United States as part of the law of bankruptcy, we hold that when there has been no negligence or laches on the part of a plaintiff in coming to

the knowledge of the fraud which is the foundation of the suit, and when the fraud has been concealed or is of such character as to

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conceal itself, the statute does not begin to run until the fraud is discovered by, or becomes known to, the party suing or those in privity with him.

The result of this proposition is that the decree of the circuit court sustaining the demurrer and dismissing the bill must be

Reversed with directions for further proceedings in conformity to this opinion.

[Footnote 1]

Booth v. Lord Warrington, 4 Brown's Parliamentary Cases 163; *South Sea Company v. Wymondsell,* 3 Peere Williams 143; *Hovenden v. Lord Annesley,* 2 Schoales & Lefroy 634; *Stearns v. Page,* 7 How. 819; *Moore v. Greene,* 19 How. 69; *Sherwood v. Sutton,* 5 Mason 143; *Snodgrass v. Bank of Decatur,* 25 Ala. 161.

[Footnote 2]

Troup v. Smith, 20 Johnson 33; *Callis v. Waddy,* 2 Munford 511; *Miles v. Barry,* 1 Hill (South Carolina) 296; *York v. Bright,* 4 Humphry 312.

[Footnote 3]

Bree v. Holbech, Douglas 655; *Clarke v. Hougham,* 3 Dowling & Ryland 322; *Cranger v. George,* 5 Barnewall & Cresswell 149; *Turnpike Co. v. Field,* 3 Mass. 201; *Welles v. Fish,* 3 Pickering 75; *Jones v. Caraway,* 4 Yeates 109; *Rush v. Barr,* 1 Watts 110; *Pennock v. Freeman, ib.,* 401; *Mitchell v. Thompson,* 1 McLean 9; *Carr v. Hilton,* 1 Curtis 230.