

Lamaster Vs. Keeler

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Court : US Supreme Court

Decided On : Dec-05-1887

Appeal No. : 123 U.S. 376

Appellant : Lamaster

Respondent : Keeler

Judgement :

Lamaster v. Keeler - 123 U.S. 376 (1887)

U.S. Supreme Court Lamaster v. Keeler, 123 U.S. 376 (1887)

Lamaster v. Keeler

Argued November 18, 1887

Decided December 5, 1887

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ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF NEBRASKA

SYLLABUS

The provisions of Rev.Stat. 914 relating to the practice, pleadings, and forms and modes of proceeding in common law causes in circuit and district courts of the United States do not apply to remedies upon judgments, but those remedies, being governed by the provisions of 916, are confined to such remedies as were provided by the laws of the state in force when 916 was passed or reenacted, or by subsequent laws of the state adopted by the federal Court in the manner provided for in that section.

A confirmation by the court of a sale under execution will not cure an infirmity growing out of the nullity of the judgment under which it was had.

Ejectment. Judgment for the plaintiff. Defendant sued out this writ of error. The case, as stated by the court, is as follows:

This case comes before us from the Circuit Court for the District of Nebraska. It is an action of ejectment to recover a parcel of land in the City of Lincoln, State of Nebraska. The plaintiff below, the defendant in error here, traces title to the premises from a purchaser at a sale under an execution issued upon a judgment, extended by the clerk of the court so as to include certain sureties, and among them the defendant

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below. The contention of the defendant is that the extension of the judgment so as to include him was unauthorized and void, and that the execution and sale thereunder of his property was therefore without any force or validity.

The facts of the case, so far as it is necessary to state them for the disposition of the contention of the defendant below, are briefly these:

On the 12th of November, 1875, Charles W. Seymour and William Wardell, as plaintiffs, recovered a judgment in the Circuit Court of the United States for the District of Nebraska against one William P. Young, as defendant, for \$6,500 and costs. The defendant in that case, Young, being desirous of staying execution upon this judgment, obtained a bond, as the undertaking is termed, signed by five

parties, of whom Lamaster, the plaintiff in error, was one, in which, after reciting the judgment recovered, they acknowledged themselves

"security for the defendant for the payment of the judgment, interest, and costs, from the time of rendering said judgment until paid, to be paid nine months from the rendering the same."

Attached to this instrument was an affidavit of justification of all the parties signing it except Lamaster. Originally his name was signed to the affidavit, but he had it cut off before the instrument was presented to the clerk. It is unnecessary to state the circumstances under which this was done, or the effect of it (if any it had) upon his liability, as the case will be determined on other points.

The bond, so called, was approved by the clerk of the court on the second of December, 1875, and filed, and thereupon he made in one of the books of record of the court, called "Judgment Index of the Court," the following entry:

"Defendants, Lamaster, M. F. *et al.*, surety; plaintiffs, Seymour and Wardell, appearance. Docket 6 No. 138; date of judgment, November 12, 1875; amount of judgment, \$6,500."

This entry was made by the clerk under the impression that the statute of Nebraska of February 23, 1875, entitled "An act to provide for stay of executions and orders of sale," was the law governing the stay of executions upon judgments in the circuit court of the United States. The third section of the statute provides for a stay of execution for a period of nine

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months upon judgments for the recovery of money only (with certain exceptions not material in this case), on condition that the defendant shall,

"within twenty days from the rendition of judgment, procure two or more sufficient freehold sureties to enter into a bond, acknowledging themselves security for the defendant for the payment of the judgment, interest, and cost from the time of rendering judgment until paid."

The other sections which bear upon the questions involved are the following:

"SEC. 4. Officers approving stay bonds shall require the affidavits of the signers of such bonds that they own real estate, not exempt from execution and aside from encumbrances, to the value of twice the amount of the judgment. . . ."

"SEC. 6. The sureties for the stay of execution may be taken and approved by the clerk, and the bond shall be recorded in a book kept for that purpose, and have the force and effect of a judgment confessed from the date thereof against the property of the sureties, and the clerk shall enter and index the same in the proper judgment docket as in the case of other judgments."

"SEC. 9. At the expiration of the stay, the clerk shall issue a joint execution against the property of all the judgment debtors and sureties, describing them as debtors or sureties therein."

See Laws of Nebraska 1875, pp. 49-51.

Upon the assumed sufficiency of the bond of the sureties, and of the above entry in the judgment index under the statute of Nebraska, the clerk, on the fourteenth of April, 1881, issued an alias execution to the marshal of the district, commanding him as follows:

"That of the goods and chattels, and for want thereof, then of the lands and tenements of William P. Young, debtor, and John I. Irwin, Jane Y. Irwin, W. T. Donovan, Milton F. Lamaster, and Nathan F. Moffit, sureties, in your district, you cause to be made the sum of four thousand seven hundred forty-four and 31/100 dollars, being the balance due April 2, A.D. 1881, on the judgment of the Circuit Court of the United States for the District of Nebraska at the November term thereof, in the year 1875, by which Charles W. Seymour and

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William W. Wardell recovered against the said William P. Young, with interest thereon from the second day of April, A.D. 1881, until paid, together with the further sum of ____, costs of increase on said judgment, and also the costs that

may accrue on this writ. And have you the said moneys before the clerk of the said circuit court at the City of Omaha, in said district, within sixty days, to be paid to the persons entitled to receive the same."

Under this execution, the premises in controversy, being a lot in the City of Lincoln, was, on the 17th of May, 1881, sold to one Thomas Ewing for the sum of \$5,600. A motion to set aside the sale having been denied and the sale confirmed, the marshal's deed of the premises was made to the purchaser, and he conveyed them to the plaintiff.

The petition, the designation given to the first pleading, in the system of procedure in civil cases in force in Nebraska, sets forth the title of the plaintiff under the execution and sale mentioned, the detention of the premises by the defendant, and the receipt by him of the rents and profits to the amount of \$3,000, and prays judgment for the possession of the premises and for the rents and profits. The defendant pleaded that rents and profits. The defendant pleaded that the purchaser at the execution sale, to the plaintiff, was colorable and collusive, for the purpose of enabling the latter to commence and maintain an action for the recovery of the property in the circuit court of the United States. And in answer to the petition, the defendant denied the validity of the bond, the extension of the judgment against him, and the proceedings thereunder, and also set up the pendency in the state court of a suit for the determination of his title to the premises.

Two trials of the case were had, which is permissible in actions of ejectment under the laws of Nebraska. On the first, the verdict of the jury was for the defendant; on the second, they found that the conveyance by the purchaser at the marshal's sale to Ewing, the plaintiff herein, was

"merely colorable and collusive, and was made for the purpose of creating a case cognizable in the federal court, and the plaintiff was not the real party in interest, but that the action was being

prosecuted for the use and benefit of Ewing, and that Keeler is only a nominal and colorable party."

This verdict being set aside by the court, a third trial was had which resulted in a general verdict for the plaintiff under the instructions of the court. The question raised on the trial, and decided by the court, upon the instructions refused and those given, related to the validity of the proceedings taken by the clerk upon the bond of the sureties, to authorize execution against their property, and the sale of the premises.

The defendant requested the court to instruct the jury that the statute of Nebraska respecting the stay of executions and orders of sale, approved February 23, 1875, "was not operative to authorize the execution against Lamaster's property," but the court refused the instruction, and charged the jury as follows:

"That the filing of defendant's bond with the clerk of the court, and its approval by him, and his approval of the sureties thereto, including the defendant, the record of the same, the entry of memoranda thereof in the judgment index, called in the statute 'extending the judgment,' justified the issue by the clerk of the court of an execution upon the judgment of Seymour and Wardell against Young and others, directed to the marshal, commanding him to make the balance due upon the judgment out of the property of the principal and sureties, including that of the defendant, Lamaster, and the sale by the marshal of the defendant's property under and by virtue of the execution, was authorized by law."

And again,

"That when the bond was taken by the clerk, as shown in evidence, and when the proceedings were taken thereon leading to the sale by the marshal of the property in question, the statute of this state, passed on the 23d of February, 1875, and entitled 'An act to provide for stay of executions and orders of sale,' was in force in the court, and was a law therein, the same as in the district courts of the state."

And the court further instructed the jury to find a general verdict for the plaintiff.

To the refusal of the court to give the instruction requested, and to the instructions given, the defendant at the time excepted.

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The jury found a verdict for the plaintiff, and to review the judgment entered thereon the defendant has brought the case here on a writ of error.

On the 30th of December, 1876, and not before, the Circuit Court of the United States for the District of Nebraska made the following order:

"Ordered that the laws of the State of Nebraska now in force regulating the issuing of executions and of the proceedings to be had thereon and thereunder, be, and the same are hereby, adopted as the rule of procedure to enforce the collection of judgments in the United States circuit and district courts for said state. "

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MR. JUSTICE FIELD, after stating the case, delivered the opinion of the Court as follows:

The contention of the plaintiff below, the defendant in error here, that the Act of Nebraska of February 23, 1875, governed proceedings for the stay of money judgments in the federal courts of the Nebraska district equally as for the stay of such judgments in the courts of that state, and in like manner determined the liability of sureties upon bonds given for such stay, is founded upon the language of 914 of the Revised Statutes, which is as follows:

"The practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes in the circuit and district courts, shall conform, as near as may be, to the practice, pleadings, and forms and modes of proceeding existing at the time in like causes in the courts of record of the state within which such circuit or district courts are held, any rule of court to the contrary notwithstanding."

This section is a reenactment of 5 of the Act of June 1, 1872, "to further the administration of justice," 17 Stat. c. 255, and was intended to assimilate the pleadings and the procedure in common law cases in the federal courts to the pleadings and procedure used in such cases in the courts of record of the state within which the federal courts are held. Much inconvenience had been previously felt by the profession from the dissimilarity in pleadings, forms, and modes of procedure

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of the federal courts from those in the courts of the state consequent upon the general adherence of the former to the common law forms of actions, pleadings, and modes of procedure, while the distinctions in such forms of action and the system of pleading and the modes of procedure peculiar to them had been in many states abrogated by statute. The new codes of procedure did not require an accurate knowledge of the intricacies of common law pleading, and to obviate the embarrassment following the use of different systems in the two courts, the section mentioned of the act of 1872 was adopted. As said by this Court in the case of *Nudd v. Burrows*, [91 U. S. 426](#) , [91 U. S. 441](#) , its purpose

"was to bring about uniformity in the law of procedure in the federal and state courts of the same locality. It has its origin in the code enactments of many of the states. While in the federal tribunals, the common law pleadings, forms, and practice were adhered to, in the state courts of the same district, the simpler forms of the local code prevailed. This involved the necessity, on the part of the bar, of studying two distinct systems of remedial law and of practicing according to the wholly dissimilar requirements of both. The inconvenience of such a state of things is obvious. The evil was a serious one. It was the aim of the provision in question to remove it. This was done by bringing about the conformity in the courts of the United States which it prescribes."

The general language of the section, in the absence of qualifying provisions, would comprehend all proceedings in a cause, from its commencement to its conclusion, embracing the enforcement of the judgment therein. The court which has

jurisdiction of a cause has jurisdiction over the various proceedings which may be taken therein, from its initiation to the satisfaction of the judgment rendered. Any practice, pleading, form, or mode of proceeding which may be applicable in any stage of a cause in a state court would therefore, under the section in question, in the absence of other clauses, be also applicable in a like stage of a similar cause in a federal court. The section would embrace proceedings after judgment equally with those preceding its rendition.

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The first process act of Congress, passed September 29, 1789, 1 Stat. 93, provided

"That, until further provision shall be made . . . the forms of writs and executions, except their style, and modes of process, . . . in the circuit and district courts, in suits at common law, shall be the same in each state, respectively, as are now used or allowed in the supreme courts of the same."

The second process act, passed May 8, 1792, 1 Stat. 275, provided

"That the forms of writs, executions, and other process, except their style, and the *forms and modes of proceeding* in suits, in those of common law, shall be the same as are now used in the said courts, respectively, in pursuance of the act entitled 'An act to regulate processes in the courts of the United States'"

-- the first process act mentioned above.

In [Wayman v. Southard](#), 10 Wheat. 1, these statutes were considered and construed by this Court. And in giving a meaning to the language, "forms and modes of proceeding in suits," the Court, speaking by Chief Justice Marshall, said that it

"embraces the whole progress of the suit, and every transaction in it, from its commencement to its termination, which has been already shown not to take place until the judgment shall be satisfied. It may, then, and ought to be understood as

prescribing the conduct of the officer in the execution of process, that being a part of the proceedings in the suit."

10 Wheat. [23 U. S. 32](#) .

There would therefore be good reason for the contention of the plaintiff below that the general words of 914 of the Revised Statutes, "forms and modes of proceeding," apply to proceedings for the enforcement of judgments, as well as to proceedings before the judgments were rendered, but for the provisions of 916, which is 6 of the same Act of June 1, 1872, from which 914 was taken. Section 916 is as follows:

"The party recovering a judgment in any common law cause in any circuit or district court shall be entitled to similar remedies upon the same, by execution or otherwise, to reach the property of the judgment debtor as are now provided in like causes by the laws of the state in which such

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court is held, or by any such laws hereafter enacted which may be adopted by general rules of such circuit or district court, and such courts may, from time to time, by general rules, adopt such state laws as may hereafter be in force in such state in relation to remedies upon judgments, as aforesaid, by execution or otherwise."

This section shows that, in pursuing the remedies for the enforcement of a judgment in a common law cause recovered in a federal court, the "forms and modes of proceeding" provided for the enforcement of a like judgment in a state court are not to be followed unless they were prescribed by a law of the state at the time the provisions of the section took effect, or, if subsequently prescribed by such law, until they have been adopted by a general rule of the court. In providing for remedies upon judgments, the section not only excludes the application of the provisions of 914 to such remedies, but also indicates the extent to which remedies upon judgments furnished by state laws may be used in the federal courts. Congress, which alone can determine the remedies which may be pursued

for the enforcement of judgments in the federal courts as well as the procedure to be adopted in the progress of a suit, has declared its will with respect to both. The procedure in civil causes, other than those in equity and admiralty, from their commencement to final judgment, must conform as near as may be to the procedure *existing at the time* in like causes in the courts of record of the state in which the federal courts are held. It must therefore follow subsequent changes in the procedure in like causes in the state courts. But to enforce judgments in common law causes, only such remedies can be pursued "as *are now provided* in like causes by the laws of the state" -- that is, when the act of Congress on the subject, the above section, was passed or reenacted -- or, if provided by subsequent laws of the state, such as have been adopted by the federal courts.

It matters not that the remedies designated in 916 are stated to be to reach by execution or otherwise the property of the judgment debtor, and that proceedings under the stay law

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of Nebraska are only to secure, where a stay is obtained, the personal liability of the sureties for the amount of the judgment -- in the absence of a designation of any other remedies, the section is a declaration that, until adopted by a rule of the court, no other remedies prescribed by state law shall be permitted in the federal courts. The extent to which the authority of the federal courts may go in the enforcement of judgments, by resort to remedies provided by state laws in similar cases, is thus defined and limited.

Section 916, as mentioned, is taken from the act of Congress of June 1, 1872, and is reenacted in the Revised Statutes, which took effect as of December 1, 1873. The Act of Nebraska of February 23, 1875, had not been adopted by any rule of the federal court when the judgment of *Seymour v. Young* was rendered in the circuit court of the United States, November 12, 1875, or when that judgment was extended by the clerk of that court, December 2, 1875, so as to embrace the sureties on the bond given to stay execution. That act was not adopted as a rule of procedure of that court until December 30, 1876.

It follows from this construction of the two sections, 914 and 916, that the act of Nebraska did not govern proceedings for the stay of execution upon that judgment, or determine the liability of the sureties on the bond or undertaking given for such stay, and that the act of the clerk extending that judgment against the sureties was without authority and void. The sale, under the execution of the property of Lamaster, one of the sureties, and the deed of the marshal to the purchaser at such sale, therefore conferred no title. The confirmation of the sale by the order of the court did not cure the invalidity of the execution upon which it was made. The extension of the judgment against Young so as to embrace the sureties, being a void proceeding, no subsequent action upon the sale could give it validity. A confirmation of a sale may cure mere irregularities not affecting its fairness, but not an infirmity growing out of the nullity of the judgment under which it was had.

The judgment below must therefore be reversed, and the cause remanded for a new trial, and it is so ordered.