

Blacklock Vs. Small

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Court : US Supreme Court

Decided On : Apr-23-1888

Appeal No. : 127 U.S. 96

Appellant : Blacklock

Respondent : Small

Judgement :

Blacklock v. Small - 127 U.S. 96 (1888)

U.S. Supreme Court Blacklock v. Small, 127 U.S. 96 (1888)

Blacklock v. Small

No. 148

Argued April 10-11, 1888

Decided April 23, 1888

127 U.S. 96

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF SOUTH CAROLINA

SYLLABUS

Two plaintiffs, citizens of Georgia, brought a suit in equity in the Circuit Court of the United States for the District of South Carolina against S., a citizen of South Carolina, and H., a sister of the plaintiffs, also a citizen of South Carolina, to set aside the alleged payment by S. to R., another defendant, of a bond and mortgage given by him to B., the father of the plaintiffs and of H., and to have the satisfaction of the

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mortgage annulled and the bond and mortgage delivered up by S., and the bond paid, and the mortgaged premises sold. Before the alleged payment to R., B. had assigned the bond to R., in trust for the three children. When the suit was brought, B. was a citizen of South Carolina. *Held* that, as B. could not have brought the suit, the circuit court was forbidden to take cognizance of it by 1 of the Act of March 3, 1875, c. 137, 18 Stat. 470.

This suit was a suit founded on contract in favor of an assignee, and was not a suit founded on the wrongful detention by S. of the bond and mortgage.

The defendant H., by answer, joined in the prayer of the bill and asked to have the bond and mortgage declared valid in the hands of R., as trustee, for the benefit of H. and the plaintiffs, and for a decree that S. pay to H. and the plaintiffs the amount secured by the bond and mortgage. *Held* that as H. and S. were, when the suit was brought, both of them citizens of South Carolina, the circuit court had no jurisdiction.

As that court had dismissed the bill on the merits, with costs, and the plaintiffs and H. had appealed to this Court, the decree was reversed, with costs in this Court against the appellants, and the case was remanded, with a direction to dismiss the bill for want of jurisdiction, without costs of that court.

This is a bill in equity, filed on the 8th of October, 1879, in the Circuit Court of the United States for the District of South Carolina by Emma Jane Blacklock and Mary

Blacklock, citizens of Georgia, against Jacob Small, a citizen of South Carolina, Alexander Robertson, a citizen of North Carolina, and Helen Robertson Blacklock, a citizen of South Carolina.

The substance of the allegations of the bill is that on the 20th of March, 1860, John F. Blacklock, the father of the plaintiffs, owning a house and lot in the City of Charleston in the State of South Carolina, sold and conveyed it to the defendant Small, who, on the same day, gave back to Blacklock a bond and mortgage, the mortgage covering the house and lot, and being given to secure the payment on the bond of the sum of \$10,600, by three equal and successive annual installments, the first one payable on the 20th of March, 1861, with interest from the date of the bond and mortgage, payable annually. That the purchase money of the house and lot was \$16,000, of which \$5,400 was paid in cash at the time; that Blacklock, the mortgagee, after receiving from Small, on the

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19th of March, 1861, \$742 for one year's interest at seven percent, on the bond, endorsed on it the following assignment:

"For value received, I hereby assign, transfer, and set over all my right, title, and interest in this bond to Alexander Robertson, in trust for children of J. F. Blacklock."

"J. F. BLACKLOCK"

That the assignee was the defendant Robertson, and the "children of J. F. Blacklock" were the plaintiffs and the defendant Helen Robertson Blacklock; that small pretended to pay the bond by making payments to Robertson as follows: on the 16th of October, 1861, \$3,600 on account of principal, and \$147 for interest; on the 4th of April, 1862, \$2,000 on account of principal, and \$490 for interest, and on the 10th of April, 1862, the balance of the principal and interest -- making such payments in the Treasury notes of the Confederate States; that upon the receipt thereof, Robertson satisfied the mortgage, and delivered up the bond to Small; that at the time of the creation of the trust in the hands of Robertson, the children

of Blacklock were infants; that in May, 1861, Blacklock went with the children to England, and remained there until the close of the war; that Robertson, in receiving such payments in the Treasury notes of the Confederate States, violated his duty and was guilty of a breach of trust; that Small, in attempting to pay the debt in an illegal currency, with full notice of the trust, had not paid the debt; that the satisfaction of the mortgage was void, and its lien was still subsisting, and that Small was still liable for the amount due on the bond, with interest.

The prayer of the bill is that the payment of the bond in Confederate Treasury notes may be disallowed; that the satisfaction of the mortgage may be annulled, and the mortgage be reestablished, and declared a subsisting lien on the land; that Small may be ordered to deliver up the bond and mortgage to the plaintiffs, and that the plaintiffs may have a decree for the payment to them by Small of the amount due, and for a sale of the mortgaged premises.

Small appeared in the suit and interposed a plea that the court had no jurisdiction of the cause because the plaintiffs, as well as himself, were citizens of South Carolina when the bill

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was filed. On issue joined on this plea, it was overruled and Small put in an answer to the bill, as did also Robertson.

The defendant Helen Robertson Blacklock put in an answer, admitting the allegations of the bill and averring that Robertson held the bond and mortgage as a trustee for herself and her sisters, in whom was the real and actual interest therein; that the attempted payment by Small was without legal effect; that the bond and mortgage were still the property of the defendant and her sisters, and that she joins in the prayer of the bill that the pretended payments of the bond by Small to Robertson, and the satisfaction entered on the mortgage, be declared null and void, that the bond and mortgage be declared valid and subsisting obligations of Small to Robertson as the trustee of a trust for the benefit of the defendant and her sisters, and that Small be decreed to pay the defendant and the plaintiffs the

amount of money secured by the bond and mortgage.

Under replications to the answers, proofs were taken by the several parties. The case was heard on its merits, and a decree was made dismissing the bill, with costs. From this decree the plaintiffs and the defendant Helen Robertson Blacklock have appealed to this Court.

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MR. JUSTICE BLATCHFORD delivered the opinion of the Court.

It appears by the proofs in the record that John F. Blacklock, the assignor of the bond, was at the time of the assignment a citizen of South Carolina, and continued to be such until this suit was commenced, and that the defendant Small was, when this suit was commenced, a citizen of South Carolina. Under these circumstances, the provision of the first section of the Act of Congress of March 3, 1875, c. 137, 18 Stat. 470, applies to this case. That provision is as follows:

"Nor shall any circuit or district court have cognizance of any suit founded on contract in favor of an assignee unless a suit might have been prosecuted in such court to recover thereon if no assignment had been made, except in cases of promissory notes negotiable by the law merchant, and bills of exchange."

The present suit is a suit against Small, founded on contract -- namely his bond and mortgage in favor of the plaintiffs -- who claim only under the assignment made by their father, John F. Blacklock, to the defendant Robertson. John F. Blacklock could not have prosecuted this suit in the Circuit Court of the United States for the District of South Carolina to recover on the bond and mortgage against Small if he had made no assignment of the bond to Robertson, for the reason that he and Small were not citizens of different states when the suit was commenced, but were both of them at that time citizens of South Carolina.

In answer to this objection, it is contended by the appellants that this suit is not to be regarded as a suit founded on the contract of Small to recover thereon, but is to be regarded as a suit for the delivery of the bond and mortgage by Small to the

plaintiffs founded on their wrongful detention, and that the rest of the relief prayed by the bill is ancillary and incidental, and the cases of *Deshler v. Dodge*, 16 How. 622, and *Bushnell v. Kennedy*, 9 Wall. 387, are cited as authorities. But they do not apply.

The case of *Deshler v. Dodge* was an action of replevin, brought by a citizen of New York against a citizen of Ohio

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in the Circuit Court of the United States for the District of Ohio to recover possession of a package of bank bills. The title of the plaintiff to the contents of the package was derived by assignment from corporations of Ohio. The Court held that the action could be maintained although the assignors could not have brought the suit, and that the suit was not one to recover the contents of a chose in action within the meaning of 11 of the Judiciary Act of September 24, 1789.

In *Bushnell v. Kennedy*, it was said, though not determined because not necessary to that case, that the provision of the eleventh section of the Judiciary Act of 1789 did not apply to a naked right of action founded on a wrongful act or a neglect of duty, to which the law attached damages.

In the present case, the bill is clearly one for a decree against Small for the amount of the bond, and for a foreclosure of the mortgage and a sale of the mortgaged premises.

There is another difficulty in the case on the question of jurisdiction. The bond was a unit; the mortgage was a unit, and the assignment of the bond by Blacklock to Robertson in trust for the children of Blacklock was a unit. The bond cannot be enforced against Small, nor can the mortgaged premises be sold in favor of the two plaintiffs alone. The relief asked in the suit must necessarily be for the benefit of the defendant Helen Robertson Blacklock, as well as for the benefit of the plaintiffs, especially as, by her answer, she ranges herself on the side of the plaintiffs as against Small, joins in the prayer of the bill, and asks that the payment of the bond and the satisfaction of the mortgage be declared void, and that the

bond and mortgage be declared valid in the hands of Robertson, as trustee, for the benefit of herself and the plaintiffs, and that Small be decreed to pay to herself and the plaintiffs the amount of money secured by the bond and mortgage, with interest. The suit is therefore shown to be one substantially by and for the benefit of Helen Robertson Blacklock, and the proofs show that at the time of the commencement of the suit, she was, and has since then always continued to be, a citizen of South Carolina, of which state Small was and

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is a citizen. *Ayres v. Wiswall*, [112 U. S. 187](#) ; *Thayer v. Life Association*, [112 U. S. 717](#) ; *New Jersey Central Railroad Co. v. Mills*, [113 U. S. 249](#) ; *Louisville & Nashville Railroad v. Ide*, [114 U. S. 52](#) .

The circuit court ought therefore to have dismissed the bill for want of jurisdiction, and not upon the merits. For this error its decree is reversed, with costs in this Court against the appellants, because the reversal takes place on account of their fault in invoking the jurisdiction of the circuit court when they had no right to resort to it, *Mansfield, Coldwater & Lake Michigan Railroad v. Swan*, [111 U. S. 379](#) , [111 U. S. 388](#) -389, and

The case is remanded to the circuit court, with a direction to dismiss the bill for want of jurisdiction, without costs of that court.

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