

Harrison Vs. Sterry

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Court : US Supreme Court

Decided On : 1908

Appeal No. : 9 U.S. 289

Appellant : Harrison

Respondent : Sterry

Judgement :

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Harrison v. Sterry

9 U.S. (5 Cranch) 289

APPEAL FROM A DECREE OF THE CIRCUIT

COURT FOR THE DISTRICT OF SOUTH CAROLINA

SYLLABUS

In the distribution of a bankrupt's effects in this country, the United States is entitled to a preference, although the debt was contracted by a foreigner in a foreign country, and although the United States had proved its debt under the

commission of bankruptcy and had voted for an assignee.

An assignment by one partner, in the name of the co-partnership, of the partnership effects and credits, is valid.

Under a separate commission of bankruptcy against one partner, only his interest in the joint effects passes.

The bankrupt law of a foreign country cannot operate a legal transfer of property in this country.

This was an appeal from a decree of the Circuit Court for the District of South Carolina in a suit in equity in which Richard Harrison was complainant and the following parties defendants, *viz.*, 1, The United States; 2, Sterry and others, assignees of H. M. Bird and Benjamin Savage under a British commission of bankruptcy; 3, Aspinwall and others, assignees of Robert Bird, under an American commission of bankruptcy; 4, several American creditors who had attached the effects of Bird, Savage & Bird, in South Carolina; 5, several British creditors who had also attached the same effects, and, 6, Thomas Parker, who, by consent of the creditors, had been appointed by the court of common pleas in South Carolina, an agent for all the parties concerned, to collect and receive the debts due to Bird, Savage & Bird, which had been attach and when

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received, to hold the same till the further order of the court.

The question was how those attached effects should be distributed.

Harrison, the complainant, claimed them as a trustee for the benefit of certain creditors of the house of Robert Bird & Co., which was the name of the firm by which the house of Bird, Savage & Bird of London carried on merchandise at New York. Robert Bird, desirous of aiding and supporting the credit of the house of Bird, Savage & Bird, by raising funds, upon the security of the cargo of the East India ship *Semiramis*, and certain debts to a large amount due to them in South Carolina, made a deed of trust on 3 December, 1802, intending thereby to assign

that cargo and those debts to the complainant. The deed purported to be signed and sealed by H. M. Bird and Benjamin Savage, by Robert Bird, their attorney, and by Robert Bird, in his own right. It recited that

"Whereas H. M. Bird, Benjamin Savage and Robert Bird, being co-partners in trade under the several firms of Bird, Savage & Bird, and Robert Bird & Co. have in consequence of disappointments been obliged to borrow money from the Bank of England, and under the firm of Robert Bird & Co. to purchase bills of exchange, public and bank stocks and goods upon credit in America in order to furnish means of more effectually supporting the credit of the said Bird, Savage & Bird of London. And whereas it may be necessary for the purpose aforesaid that the said Robert Bird & Co. should continue to make such purchases until the present difficulties may be removed, and security having been already given to the persons bound as sureties to the Bank of England, for their responsibilities, the said H. M. Bird, Benjamin Savage and Robert Bird, are desirous to secure all persons from whom purchases have been or may be made as aforesaid, for the purpose of aiding the said house or firm of Bird, Savage & Bird. Now therefore know ye that the said Henry M. Bird, Benjamin

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Savage and Robert Bird, for the purpose above expressed"

&c.; The trust expressed was

"to apply the same and every part thereof for the equal security and indemnification, in proportion to their just demands, of all persons from whom the said Robert Bird & Co. shall, before the end of the year 1803, have made any such purchases of goods, stocks or bills, or who before that time shall be holders of any bills of exchange drawn or negotiated by the said Robert Bird & Co. for the purpose of giving support to the house of Bird, Savage & Bird, as aforesaid."

Another ground of Harrison's claim was a similar instrument of writing, dated 31 January, 1803, not under seal, but signed, "Bird, Savage & Bird," and "Robert Bird & Co." which signatures were in the handwriting of Robert Bird.

The bill of complaint stated that Robert Bird & Co., before and after 3 December, 1802, and before the end of the year 1803, made various purchases of stocks, goods and bills of exchange, and became indebted for bills drawn and negotiated by them for the purpose of giving support to the house of Bird, Savage & Bird, which debts remain unpaid. There was a letter of attorney from Henry M. Bird and Benjamin Savage to Robert Bird, but it did not authorize him to execute deeds in their names generally.

The claim of the United States rested upon the priority given by the Act of Congress of 3 March, 1797. Vol. 3, p. 423, § 5.

The attaching creditors relied upon their attachments under the laws of South Carolina.

The assignees under the several commissions of bankruptcy relied upon the British and American bankrupt laws.

The United States had proved its claim under the American commission and had voted in the

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choice of assignees. They had also attached the effects in South Carolina under the laws of that state, and had arrested Robert Bird and held him to bail in New York.

The court below decided that the United States was entitled to priority of payment. That after satisfaction of that claim Harrison would be entitled, under the assignment, to Robert Bird's third part or share of the property mentioned in the deed, and the attaching creditors to the other two-thirds. That the assignees under the British commission could take nothing, and that the assignees under the American commission could take nothing but the surplus after all the other classes of creditors were satisfied.

From this decree all the parties excepting the United States appealed.

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court as follows:

The object of this suit is to obtain the direction of the Court for the distribution of certain funds in South Carolina which were the property of a company trading in England under the firm of Bird, Savage & Bird, and in America under the firm of Robert Bird & Co. The United States claim a preference to all other creditors, and their claim will be first considered.

Two points have been suggested, as taking this case out of the operation of the preceding decisions of the court respecting the priority to which the United States are entitled.

1. That the contract was made with foreigners in a foreign country.

2. That the United States has waived their privilege by proving its debt under the commission of bankruptcy.

1. The words of the act which entitled the United States to a preference do not restrain that privilege to contracts made within the United States, or with American citizens. To authorize this Court to impose that limitation on them, there must be some principle in the nature of the case which requires it. The Court can discern no such principle. The law of the place where a contract is made is, generally speaking, the law of the contract -- *i.e.* it is the law by which the contract is expounded. But the right of priority forms no part of the contract

itself. It is extrinsic, and is rather a personal privilege dependent on the law of the place where the property lies, and where the court sits which is to decide the cause. In the familiar case of the administration of the estate of a deceased person, the assets are always distributed according to the dignity of the debt, as regulated by the law of the country where the representative of the deceased acts, and from which he derives his powers, not by the law of the country where the

contract was made. In this country, and in its courts, in a contest respecting property lying in this country, the United States is not deprived of that priority which the laws give them by the circumstance that the contract was made in a foreign country with a person resident abroad.

2. Nor is this priority waived by proving the debt before the commissioners of the bankrupt.

The 62d section of the Bankrupt Act expressly declares that

"Nothing contained in that law shall in any manner affect the right of preference to prior satisfaction of debts due to the United States, as secured by any law heretofore passed."

There is nothing in the act which restrains the United States from proving its debt under the commission, and the 62d section controls, so far as respects the United States, the operation of those clauses in the law which direct the assignees to distribute the funds of the bankrupt equally among all those creditors who prove their debts under the commission. Omit this section, and the argument of the counsel for the general creditors would be perfectly correct. The coming in as a creditor under the commission might then be considered as electing to be classed with other creditors. But the operation of this saving clause is not confined to cases in which the United States decline to prove their debt under the commission. It is universal. It introduces, then, an exception from the general rule laid down in the 29th and 30th sections of the

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act, and leaves to the United States that right, to full satisfaction of their debts to the exclusion of other creditors, to which they would be entitled, had they not proved their debt, under the commission.

The priority of the United States is to be maintained in this case unless some of the creditors can show a title to the property anterior to the time when this priority attaches.

The assignment made to Richard Harrison is, it is contended, such a title.

To this assignment several objections have been made.

1. It is said that Robert Bird was not authorized to make it, because it is not a transaction within the usual course of trade. But this Court is of opinion that it is such a transaction. The whole commercial business of the company in the United States was necessarily committed to Robert Bird, the only partner residing in this country. He had the command of their funds in America, and could collect or transfer the debts due to them. The assignment under consideration is an act of this character, and is within the power usually exercised by a managing partner. In such a transaction he had a right to sign the name of both firms, and his act is the act of all the partners.

2. It is the assignment of a chose in action, and is therefore to be considered rather as a contract than an actual transfer, and could be of no validity against the several claimants in this case.

The authorities cited at bar, especially those from 1 Atk. and Williams' Law Cases, are conclusive on this point to prove that equity will support an equitable assignment.

3. But a third exception has been taken to this instrument which the Court deems a substantial one.

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It is made under circumstances which expose it to the charge of being a fraud on the bankrupt laws.

Considered as the act of Bird, Savage & Bird, it is dated but a few days before their bankruptcy, and considered as the act of Robert Bird & Co., it is but a short time before they stopped payment, and is made at a time when there is much reason to believe from the face of the deed, as well as from extrinsic circumstances, that such an event was in contemplation.

Money actually advanced upon the credit of this assignment subsequent to its date might perhaps be secured by it, but there is no evidence that any money was actually advanced upon it, and the face of the instrument itself would not encourage such an opinion. It might be caught at by those who were already creditors, but holds forth no inducements to become creditors. It was impossible for any person viewing it to judge of the sufficiency of the fund, or of the preexisting liens on it.

This assignment, therefore, under all its circumstances, many of which are not here recited, is no bar to the claim of the United States or of the attaching creditors.

This being the case, there exists no obstacle to the priority claimed by the United States, and their debt is to be first satisfied out of the fund to be distributed by the court.

2. The attaching creditors are next in order.

By the bankrupt law of the United States, their priority as to the funds of the bankrupt is lost. They can only claim a dividend with other creditors. So far, then, as the effects attached are the effects of the bankrupt, their lien is removed by the bankruptcy.

Robert Bird alone has become a bankrupt under

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the laws of the United States. Consequently only his private property and his interest in the funds of the company pass to his assignees. This interest is subject to the claim of his co-partners, and if, upon a settlement of accounts, Robert Bird should appear to be the creditor or the debtor of the company, his interest would be proportionally enlarged or diminished. But he is not alleged to be either a creditor or a debtor, and of consequence, the Court consider his interest as being one undivided third of the fund. This third goes to his assignees.

As the bankrupt law of a foreign country is incapable of operating a legal transfer of property in the United States, the remaining two-thirds of the fund are liable to the attaching creditors, according to the legal preference obtained by their attachments.

The Court thinks it equitable to order that those creditors who claim under the deed of 31 January, 1803, and who have not proved their debts under the commission of bankruptcy, should be now admitted to the same dividend out of the estate of the bankrupt as they would have received if, instead of relying on the deed, they had proved their debts. The assignees, therefore, take this fund subject to that equitable claim, and in making the dividend, those creditors are to receive in the first instance so much as will place them on an equal footing with the creditors who have proved their debts under the commission.

With respect to any surplus which may remain of the two-thirds, after satisfying the United States and the attaching creditors, it ought to be divided equally among all the creditors, so as to place them on an equal footing with each other. The dividends paid by the British assignees and those made by the American assignees being taken into consideration, this residuum is to be so divided between them as to produce equality between the respective creditors.