

Pierce Vs. United States

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Appeal No. : 255 U.S. 398

Appellant : Pierce

Respondent : United States

Judgement :

Pierce v. United States - 255 U.S. 398 (1921)

U.S. Supreme Court Pierce v. United States, 255 U.S. 398 (1921)

Pierce v. United States

No. 173

Argued January 24, 1921

Decided March 7, 1921

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APPEAL FROM THE CIRCUIT COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

SYLLABUS

1. A judgment for a fine imposed in a criminal case is enforceable, like a civil judgment, by execution (Rev.Stats., 1041), and by creditor's bill. P. [255 U. S. 401](#) .

2. A corporation against which an indictment was pending for taking rebates in violation of the Elkins Act divested itself of its assets by distributing them among its stockholder, who were also its officers and had notice of the prosecution. *Held* that the United States, having secured a conviction a year later upon which a fine

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was imposed, was entitled to pursue the assets by creditor's bill against the stockholders to satisfy the judgment. P. [255 U. S. 402](#) .

3. The United States, to satisfy a judgment recovered and upon which execution has been returned unsatisfied in one district, may bring a creditor's bill in another district in another state, without a preliminary issue of execution and return of *nulla bona* there. So *held* where it was agreed that the judgment debtor had no property out of which the judgment could have been satisfied at law. P. [255 U. S. 404](#) .

4. A corporation against which an indictment was pending under the Elkins Act sold all its property to another corporation, which assumed its "debts, obligations, and liabilities" as part of the purchase price. *Held* that, assuming the second corporation thus became liable to satisfy a judgment for a fine imposed upon a subsequent conviction in the criminal case, the existence of such legal remedy did not operate to debar the United States from seeking satisfaction of the judgment in equity by a creditor's bill against the stockholders of the first corporation, nor did the institution by the United States of a suit against the second company to subject land, part of the property purchased, to its judgment amount to an election of remedies. P. 404.

5. Inasmuch as a judgment in favor of the United States may be made the basis of an execution in any state and district (Rev.Stats. 986), the objection that a corporation against which the United States has a judgment in one district is a necessary party to a creditor's bill brought by the government in another state and district to obtain satisfaction from the stockholders is purely technical and, if not made in the circuit court of appeals, cannot be availed of in this Court as a ground for attacking a decree against the stockholders. P. [255 U. S. 405](#) .

6. Under Rule 24 of the Circuit Court of Appeals for the Eighth Circuit, a plain error may be noticed though not assigned or specified. *Held* that such an error, refused consideration in that court because first called to its attention by petition for rehearing, was assignable and reviewable here. P. [255 U. S. 405](#) .

7. A judgment recovered by the United States as a fine in a prosecution by indictment does not bear interest, since interest is statutory, and Rev.Stats. 966, the provision most nearly applicable, applies only to judgments recovered by civil process. *Id.*

257 F. 514 modified and affirmed.

Appeal from a decree of the circuit court of appeals affirming a decree of the district court in favor of the

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United States in a creditor's suit brought by the government against stockholders to satisfy a fine recovered from their corporation.

MR. JUSTICE BRANDEIS delivered the opinion of the Court.

In 1907, the Waters-Pierce Oil Company, a Missouri corporation, was indicted in the district court of the United States for the Western District of Louisiana under the Elkins Act (Act Feb.19, 1903, c. 708, 2, 32 Stat. 847) for receiving rebates. In 1913, the company sold and transferred all its property to the Pierce Oil Corporation, all the proceeds were paid to Henry S. Priest and Clay Arthur Pierce as trustees, and they distributed the same among the stockholders. Of these

Henry Clay Pierce and the Pierce Investment Company received millions in cash and stock and Clay Arthur Pierce a small amount. In 1914, the case under the Elkins Act was tried. The company was convicted and sentenced to pay a fine of \$14,000, and in the following year the judgment was affirmed by the circuit court of appeals. *Waters-Pierce Oil Co. v. United States*, 222 F. 69. An execution issued thereon to the marshal for that district, and was returned *nulla bona*. Thereafter, this bill in equity was brought by the United States in the federal District Court for the Eastern district of Missouri against the Waters-Pierce Oil Company, the trustees, and these three stockholders to obtain satisfaction of the judgment out of the money remaining in the hands of the trustees and that received by these stockholders. The district court entered a decree dismissing the bill as against the Waters-Pierce Company and the trustees, but granted, as against the stockholders

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named, the relief prayed by the government. The decree was affirmed by the Circuit Court of Appeals for the Eighth Circuit, one judge dissenting. The case is brought here by these defendants, under 241 of the Judicial Code. Reversal is sought on several grounds.

First. The ground for reversal most strongly urged is that the judgment imposing a fine on the Waters-Pierce Company is not a debt on which a creditor's bill will lie. The argument is that a judgment for a definite sum of money does not necessarily endow the holder with all the rights of a creditor; that a court will look behind a judgment and will grant or deny relief according to the nature of the original cause of action, as it did in *Wisconsin v. Pelican Insurance Co.*, [127 U. S. 265](#) , *Louisiana v. New Orleans*, [109 U. S. 285](#) , and *Wetmore v. Markoe*, [196 U. S. 68](#) , and that, since liability for a penalty is criminal in its nature and not strictly a debt, a creditor's bill cannot be brought upon a judgment for a penalty. It is true that to the liability for penalties imposed by the United States certain incidents of a criminal proceeding attach. See *Boyd v. United States*, [116 U. S. 616](#) ; *United States v. Stevenson*, [215 U. S. 190](#) , [215 U. S. 199](#) . But the liability is often enforced by civil proceedings, and specifically by the action of debt. *Lees v.*

United States, [150 U. S. 476](#) . See [Adams v. Woods](#), 2 Cranch 336, [6 U. S. 340](#) . And then certain incidents of civil proceedings attach. *Hepner v. United States*, [213 U. S. 103](#) .

By 1041 of the Revised Statutes, it is provided (in addition to the power existing by general usage to commit a defendant to jail until his fine has been paid, see *Ex parte Barclay*, 153 F. 669) that judgments for penalties "may be enforced by execution against the property of the defendant in like manner as judgments in civil cases are enforced." The statute applies to all judgment for penalties, whether recovered by civil or criminal proceedings. A judgment creditor's bill is in

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essence an equitable execution comparable to proceedings supplementary to execution. See *Ex parte Boyd*, [105 U. S. 647](#) . The law which sends a corporation into the world with the capacity to act imposes upon its assets liability for its acts. The corporation cannot disable itself from responding by distributing its property among its stockholders and leaving remediless those having valid claims. In such a case, the claims, after being reduced to judgments, may be satisfied out of the assets in the hands of the stockholders. * There is no good reason why the rule should be limited to judgments arising out of civil proceedings. To the contention that the statute has not made this process available for the government in enforcing a penalty, it may be answered as was done by the King's Bench a hundred years ago, in *King v. Woolf*, 2 B. & Ald. 609, 611, when it was insisted that a fine due to the crown was not a judgment debt for which execution could be levied:

"mischievous consequences would ensue to the crown and the regular administration of justice, from a delinquent's withdrawing all his property from the effect of a judgment, and the preventing that will not be a mischievous consequence to any one but himself. Here, there is a judgment that the defendant do pay to the King a fine of a certain sum. By that judgment, the debt becomes a debt to the king, of record, and it is payable to the king *instanter*. . . . If we were to say that the crown shall not be at liberty to issue an immediate execution for its

own debt, we should place the crown in a worse situation than any subject."

Second. It is contended that the right to bring a creditor's bill did not exist, because the judgment against

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the company was not entered in the trial court until a year after the company had divested itself of the property sought to be reached in this suit, and the government did not become a creditor, at all events, until after its claim for penalties had ripened into judgment. But when a corporation divests itself of all its assets by distributing them among the stockholders, those having unsatisfied claims against it may follow the assets although the claims were contested and unliquidated at the time when the assets were distributed. It is true that the bill a reach and apply the assets distributed among the stockholders cannot, as a matter of equity jurisdiction and procedure, be filed until the claim has been reduced to judgment and the execution thereon has been returned unsatisfied. *Hollins v. Brierfield Coal & Iron Co.*, [150 U. S. 371](#) . But, as a matter of substantive law, the right to follow the distributed assets (See [Railway v. Howard](#), 7 Wall. 392, [74 U. S. 409](#) ; *Northern Pacific Ry v. Boyd*, [228 U. S. 482](#) ; *Kansas City Ry. v. Guardian Trust Co.*, [240 U. S. 166](#)) applies not only to those who are creditors in the commercial sense, but to all who hold unsatisfied claims. A corporation cannot, by divesting itself of all property, leave remediless the holder of a contingent claim or the obligee of an executory contract (*Baltimore & Ohio Tel. Co. v. Interstate Tel. Co.*, 54 F. 50) or the holder of a claim in tort (*Hastings v. Drew*, 76 N.Y. 9; *Jahn v. Champagne Lumber Co.*, 157 F. 407), and there is no good reason why the United States, with a claim for penalties, should be in a worse plight. Here, the stockholders receiving the assets are in the position of volunteers, and there is not even the excuse that they were ignorant of the government's claim. They were officers of the corporation, and the indictment was pending when the transfer of the assets was made. See *Baltimore & Ohio Tel. Co. v. Interstate Tel. Co.*, *supra*.

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Third. It is contended that the bill should have been dismissed because the execution issued to the marshal for the Eastern District of Missouri was not returned unsatisfied until after the commencement of the suit. It has been held that, in litigations between private parties, a creditor's bill cannot be maintained in a federal court upon a judgment recovered in a state other than that in which suit is brought, *National Tube Works v. Ballou*, [146 U. S. 517](#) , [146 U. S. 523](#) , and that a return unsatisfied of the execution issued on the judgment sued on is held essential to the maintenance of the creditor's suit, *Taylor v. Bowker*, [111 U. S. 110](#) . But this strict rule is not applicable where the United States is the judgment creditor. Under 986 of the Revised Statutes, an execution issued in favor of the United States by any of its courts runs in every part of the United States, just as, under 985, an execution on a judgment obtained in favor of any party in a district court where the state is divided into two or more districts may run and be executed in any part of the state. *Toland v. Sprague*, 12 Pet. 300, [37 U. S. 328](#) . Here, the execution issued to the Louisiana marshal had been returned *nulla bona* before this suit was brought, and it is agreed that, when this suit was begun, the Waters-Pierce Oil Company had no property in Missouri or elsewhere out of which the judgment could be satisfied at law. To hold that, under such circumstances, the suit must fail because the return of *nulla bona* was not made by the marshal for the Eastern district of Missouri until after the filing of the original bill would apply a well settled rule to a case not within its scope.

Fourth. It is contended that the bill should have been dismissed because the government had an adequate remedy by suing the Pierce Oil Corporation, and, indeed, had commenced such a suit. That corporation assumed, as part of the purchase price of the Waters-Pierce Oil Company, its "debts, obligations and liabilities." Before

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commencing this suit, the government had brought, in a federal district court for Louisiana, a suit against the Pierce Oil Corporation to subject to the satisfaction of its judgment certain parcels of land conveyed to the corporation by the Waters-Pierce Oil Company. But, in the Louisiana suit, the Pierce Oil Corporation denied

liability, insisting that the government was not a creditor of the Waters-Pierce Oil Company. The United States could not have been required to accept in lieu of its claim against the judgment debtor even an admitted obligation of the new corporation to pay it. The existence of that possible remedy did not bar the government from following by a creditor's bill the assets of the corporation into the stockholder's hands. Nor did the suit against the Pierce Oil Corporation amount to an election of remedies which should have led the lower courts to dismiss this bill. The two remedies were consistent. See *Zimmerman v. Harding*, [227 U. S. 489](#) , [227 U. S. 494](#) .

Fifth. The contention is faintly made that the decree should be reversed because the district court dismissed the bill as against the Waters-Pierce Oil Company, a necessary party, citing *Swan Land & Cattle Co. v. Frank*, [148 U. S. 603](#) , [148 U. S. 610](#) . The argument ignores the fact that this judgment, being in favor of the United States, is, under 986 of the Revised Statutes, effective, and may be made the basis of an execution running in a state and district other than that in which the judgment was rendered. It was doubtless for this reason that the district judge concluded that it was unnecessary, if not improper, to enter in this suit judgment against Waters-Pierce Oil Company. The objection is purely technical. Since it was not set up among the many errors assigned in the court of appeals and in this Court, it cannot be availed of here.

Sixth. It is urged that the district court erred in allowing interest on the penalty (\$14,000) from the date

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of the indictment, January 29, 1907. This was not assigned as error in the circuit court of appeals, and for this reason that court refused to consider it on a petition for rehearing. In the assignment of errors filed in this Court, the objection was properly raised. Under Rule 24 of the Circuit Court of appeals for the Eighth Circuit, the court may "notice a plain error not assigned or specified," and we think it should have done so in this case. In allowing interest from January 29, 1907, the district court was clearly under the misapprehension that that was the date of the

judgment, for the decree so recites, whereas in fact judgment was not entered until March, 1914. But interest was not even allowable from that time. At common law judgments do not bear interest; interest rests solely upon statutory provision. [*Perkins v. Fourniquet*](#), 14 How. 328; *Washington & Georgetown R. Co. v. Harmon*, [147 U. S. 571](#) , [147 U. S. 584](#) -585. The only applicable statute of the United States is 966 of the Revised Statutes, which provides that "interest shall be allowed on all judgments in civil causes. . . ." Since the penalty was not recovered by civil process, but by judgment in a proceeding initiated by a criminal indictment, it obviously does not fall within the terms of the statute. Interest therefore is allowable only on the judgment from the date when it was entered against the defendants in this case -- namely March 11, 1918.

The judgment of the circuit court of appeals, as modified, is

Affirmed.

* *Wood v. Dummer*, 3 Mason, 308; [*Railroad Co. v. Howard*](#), 7 Wall. 392; *Northern P. Ry. Co. v. Boyd*, [228 U. S. 482](#) , [228 U. S. 502](#) ; *Kansas City Ry. Co. v. Guardian Trust Co.*, [240 U. S. 166](#) ; *Johnson v. Canfield-Swigart Co.*, 292 Ill 101; *Hastings v. Drew*, 76 N.Y. 9.