BANKS v. GREENLEAF.

Case No. 959.

{1 Hughes, 261;[1] 6 Call, 271.}

Circuit Court, D. Virginia. Nov. Term, 1799.

INSOLVELCY—VALIDITY OF DISCHARGE IN OTHER STATES.

G., a citizen of Maryland, gave his bond, in Virginia, to B., a citizen of Virginia, and afterwards, in Maryland, became a bankrupt by the laws of Maryland, under which he was duly discharged by the competent tribunal of Maryland under a general direction with respect to his creditors. This did not discharge him in a suit afterwards brought upon the bond in Virginia.

{Cited in Green v. Sarmiento, Case No. 5,760.}

{See Hinkley v. Marean, Case No. 6,523; Baldwin v. Hale, 1 Wall. (68 U. S.) 223; Towne v. Smith, Case No. 14,115.}

{At law. Action of debt by Banks against Greenleaf. Heard on demurrer to plea. Demurrer sustained.}

Some years past, Greenleaf, a citizen of Maryland, became indebted, by bond given in Virginia, to Banks, a citizen and inhabitant of the state of Virginia. Afterwards, Greenleaf took the benefit of the bankrupt laws of Maryland; and being arrested for the foregoing debt in this court, he pleaded the discharge, under the bankrupt laws of Maryland, in bar of the claim. To this plea the plaintiff demurred; and the defendant joined in the demurrer.

Bennet Taylor, for the plaintiff, contended, that the plaintiff and defendant, not being citizens of the same state, the laws of Maryland did not bind the plaintiff. For the several states are sovereign and independent of each other, (2 Wash. {Va.} 298,) and therefore, the laws for one cannot, for transactions out of its limits, bind the citizens of another more than two unconnected countries can bind the subjects of each other, (Cooke, Bankr. Law, 243; Wythe, 133; James v. Allen, 1 Dall. {1 U. S.} 188.)

Randolph, contra.

The discharge, under the bankrupt laws of Maryland, is a complete bar to the plaintiff's action. All countries make laws against absentees; and, if they are improper, it is a state and not a judiciary question. Robinson v. Bland, 1 W. Bl. 258, takes the distinction between local and general statutes, making the latter to be obligatory in other countries. But Solomons v. Ross, 1 H. Bl. 131, is decisive; and proves the universal effect of bankrupt laws, with respect to personal actions, which is confirmed by Martin, Law Nations, 104. There is no difference as to the obligation, whether it be a judiciary or

legislative act of a foreign country. Besides, in this case, the court of chancery in Maryland has acted with regard to the creditors at large of the bankrupt; and so far as it may be called judicial.[2] The articles of confederation between the United States give the inhabitants of one state all the benefit of the other states; and if they took the conveniences they should sustain the inconveniences. This, necessarily, results from the reciprocal rights of citizens of different states, because they are all, as it were, citizens of each state. The case of Miller v. Hall, 1 Dall. {1 U. S.} 229, is expressly like this, and ought to govern it. The constitution itself establishes the reciprocal respect due to laws of one state in another, and our doctrine is not repelled by the power of congress to make bankrupt laws; because what we contend for only applies until congress have acted on the subject Cur. adv. vult

WASHINGTON, Circuit Justice. The principles laid down by Huberus, and universally acknowledged, are, that the laws of every government have force within the limits of the government, and are obligatory upon all who are within its bounds, whether subjects or temporary residents. They have no effect directly with the people of any other government, but, by the courtesy of nations, to be Inferred from their tacit consent, the laws which are executed within the limits of any government are permitted to operate everywhere, provided they do not produce injury to the rights of such other government or its citizens. This principle is universally admitted among all civilized nations, and has grown out of mutual convenience which they experience from it. "For," says the same author, "nothing would be more inconvenient in the promiscuous intercourse and practice of mankind, than that what was valid by the laws of one place should be rendered of no effect elsewhere by a severity of law." From these principles has arisen the doctrine admitted by all, that whoever makes a contract, in any particular place, is bound by the laws of that place as a temporary citizen. So a will or conveyance of movable property, executed according to the forms prescribed by law where made, has effect in every country, though not consistent with the forms or ceremony there observed. But there are certain exceptions from and modifications of these rules, some of which it may be proper to mention. As if a person shall go into a foreign country to perform a particular act, with a view to elude the laws of his own country in fraudem legis. So the effect of a contract, made in one place, will be allowed according to the laws of that country, If no inconvenience results therefrom to the citizens of the country where those laws are sought to be enforced, for the courtesy of nations could not be supposed to go so far as to admit the force of foreign laws to produce a prejudice to its citizens, to which they had, by wont of their own, submitted. So if the law of a place where a contract is made be contrary to the laws of our own country, in which a contract is also made inconsistent with a contract made in another place, we should observe our own law rather than the foreign one.

Let us proceed to examine this case, according to these rules: The contract in question was made in Virginia, by a citizen of Maryland with a citizen of Virginia. The contract is,

therefore, subject to the laws of Virginia; and the question is, whether the laws of a foreign country (if Maryland be such) discharging a contract, can be admitted here? The rule is, that the laws of a foreign country prevail if not prejudicial to the country or its citizens, and this is merely gratuitous; but to admit them to prejudice its own citizens, would be a courtesy bordering on quixotism. No government would submit to it; no government can be presumed to have tacitly submitted to this. But if the citizens go abroad and submit to their {foreign} laws, as temporary subjects, they must be bound by them, though to their prejudice; if they make a contract there, the law of that country is to prevail. In this case it would be a matter of choice; if the laws of that country give effect to the contract, he must submit to their laws which discharge it

If a will or deed is made abroad, or matrimony contracted, all the consequences follow. But if the parties have never so submitted, no government would permit a citizen to be prejudiced by foreign laws. Here are two conflicting laws. One giving validity to a contract, and governing it throughout to its discharge; and the other discharging it in a manner different from and in violation of the contract, and the appeal is made to our laws. Which is to prevail? The rule is, magis est ut in tali conflictu, ut jus nostrum, quam jus alienum, servemus. The contract in question obliges Greenleaf to pay Banks so much money. The law of Maryland says he may deliver himself by paying a part. If this be valid here, it would have been so if it had said he should deliver himself without paying any part. These laws are contradictory to each other. What, then, says the law of nations upon this subject? That the law of the country where the contract is made shall prevail; and if the law of a foreign country be inconsistent with ours, ours shall prevail.

I think the rule may safely be laid down, that if a foreigner come into our country, and there enter into a contract, the laws of his nor any other foreign country can, in our courts, be received to control, alter, or discharge it, unless the parties, by some

act of their own, submit to the laws of such foreign country.

Let us examine the cases which have been cited at the bar, and see whether they throw light upon this subject The first case which I shall notice is that of Warder v. Arell, in the court of appeals of this state, 2 Wash. IVa.) 208. In that the contract was made in Pennsylvania, and discharged under the laws of that state. That case lays down the rule as stated by Huberus, that the contract having been made in Pennsylvania, the laws of that state must govern, not as to the form, validity, or construction of the contract, but as to the discharge, for this was the only question. The expressions of all the judges in that case are remarkably strong to prove that the ground on which the laws of Pennsylvania, operating to produce the discharge, prevailed, was, that the contract was made there. Devisme v. Martin, Wythe, 133, was the case of British subjects altogether, but the chancellor states generally that the remedy of an American creditor against the bankrupt would not have been affected by the transfer of the bankrupt's effects to the assignee under the English law. Whether, if the contract has been made in England, he would have so decided, does not appear, nor was it necessary, since that was not the case before the court. In James v. Allen, 1 Dall. {1 U. S.} 188, it does not appear where the contract was made. If in Pennsylvania, I concur in the decision. If in New Jersey, I do not; because in such a case, the decision would go too far, if I am correct in the principles before laid down. Miller v. Hall, 1 Dall. {1 U. S.} 229, is obscurely reported, as to the state of the case, for it is doubtful whether the agreement, which is said to have been executed in Pennsylvania, was the one made by Miller and Hall with the owners of the goods, or the articles of copartnery between Miller and Hall. The suit, as I understand it, was brought by Miller to recover his proportion of the commission upon goods sold in Massachusetts; if it means the former, then unquestionably the cause of action arose in Massachusetts, and Hall had by no act of his submitted to the laws of Pennsylvania; if the latter, it might be a doubtful matter where it arose. The doctrine I admit is laid down very broad by the chief justice, and I do not know of any case which has gone so far as this. Emory v. Grenough, {Case No. 4,471,} was decided before Judge Iredell, in the circuit court of Massachusetts. The parties were citizens of Massachusetts, and the debt contracted there. The debtor afterwards became a citizen of Pennsylvania (not in fraudem), and obtained a certificate of bankruptcy, and pleaded it in Massachusetts, but it was not allowed. Judge Wilson, however, decided a similar case otherwise.

We come now to the British decisions. Solomons v. Ross, 1 H. Bl. 131; Jollet v. Deponthieu, Id. 132; Neale v. Cottingham, Id.; 1 Bac. Abr. 434, are all alike. The debts were contracted, it is probable, in Holland, at all events it does not appear that the creditors had been in Holland, and there became the creditors of the bank. 1 H. Bl. 131. Sill v. Worswick, Id. 694, was a contract between British subjects, and the contract was made there. It is, in this case, that the doctrine was laid down, that personal property has no

locality, and is subject to the law which governs the person of the owner, but the meaning of the judge, as to this general expression, is explained, for he says, as to the disposition of it, and its transmission by succession, or the act of the party. This is all true, all is consistent with the principles laid down. He does not contend that a contract made in St. Christopher should be governed by the laws of England, but that in such a case as the one he was speaking of, the government of St. Christopher, and all others, would give effect to the bankrupt laws of England, and so they ought. But the cases of Warring v. Knight, [Cooke, Bankr. Law, 1st Ed., 372,] mentioned by the judge, proves clearly that the place of contract would make a difference. He says that it does not appear whether the person was a resident in Gibraltar, prior to the bankruptcy, or the debt was contracted there, or whether he appeared to the suit, facts which would have materially altered the decision. In the case [Anon.] reported in [1] Brown, Ch. 376, of a payment made in Carolina, the chancellor relies upon the circumstance that the debt was contracted there. Thus, I think, it is clear that the cases which touch this point do in general support, and that there is not one which contradicts it, unless it be that of Sutter & Hart,[3] which I am not clear does so.

I will admit it is a hardship upon Greenleaf, but it would be equally hard upon Banks, and therefore it is more proper to observe our law than that of Maryland. This cannot be considered as a judgment of a Maryland court, which can bind persons residing out of that state; they are no parties to it; the claim of the plaintiff has not been litigated, after the plaintiff and defendant had submitted to the laws of that country, and had a dispute settled and adjudged. Admiralty causes bind all the world, because decided upon the laws of nations, and for the convenience of all nations. But the justice of other decisions may be questioned, and if a law of a foreign country were to declare that a decision of causes, without notice, should bind everybody, no foreign country would observe it Our attachment law is fair and just, and would be regarded everywhere.

The next point is, whether Maryland, as to her municipal regulations, is to be considered

foreign to this state? Although I am clearly of opinion that the general government derives its existence and power from the people, and not from the states, yet each state government derives its powers from the people of that particular state. Their forms of government are different, being derived from different sources, and their laws are different. Those of one state are as little obligatory upon another, as those of a foreign country. They are not as represented, and have no control over those who made them. They cannot be said to owe allegiance to any state in which they do not reside. What effect, then, has the 1st section of the 4th article of the constitution upon this subject? Read it as if it only said, full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. But for this It would be foreign, and their validity might be questioned. But this clause forbids it Full faith must be given. Therefore you cannot question the validity of the judgment. This is the construction given in the case of Armstrong v. Carson, {Case No. 543,} in the circuit court of Pennsylvania, by Judge Wilson, where the doctrine was so laid down by Bradford, and admitted by ingersol. But if there be a doubt upon those words, those which follow remove it Congress is to prescribe the manner in which they shall be proved, and the effect thereof. The demurrer is sustained.

[1] {Reported by Hon. Robert W. Hughes, District Judge, and here reprinted by permission.}

[2] This was merely the order of the chancellor with respect of the creditors in general of the bankrupt, and did not relate to this case in particular, nor was the petitioning or suing before him.

[3] {Not found.}