

Case No. 3,098.
[4 Dall. 419.]

CONFRAMP ET AL. V. BUNEL.

Circuit Court, D. Pennsylvania.

1806.

ACTION ON FOREIGN JUDGMENT—CONSTRUCTION OF FRENCH
LAW—SUSPENSION.

[1. An action between French subjects on a foreign judgment, recovered in 1789, for the purchase price of negroes, commenced after 1803, is within the French law of September 6, 1802, and the law of April 12, 1803, explanatory thereof, suspending suits for debts contracted for negroes prior to 1792, and allowing

creditors to take conservatory steps for the preservation of their rights, and to liquidate their debts by judgment, but staying execution thereon.]

[2. The suspension applies as well to the commencement of a suit as to the issuance of execution.]

Mr. Moylan, for plaintiffs.

Du Ponceau & Dallas, for defendant

Capias. On a rule to show cause why the defendant should not be discharged on common bail, the following facts were established by the plaintiffs: That in the year 1787, the defendant gave his note for 55,000 livres to a person of the name of Horguet and, payable in two instalments, for value received in 55 negroes. On the 8th of February, 1787, the note was assigned to the plaintiffs, and several partial payments were afterwards indorsed upon it. In November, 1789, a suit was instituted at Port-au-Prince, to recover the balance; and a judgment, by default, was entered for 36,066 livres; to recover which was the object of the present action.

For the defendant it was shown, that all the parties to the contract were French subjects, resident in the island of St Domingo, at the time the contract was made; that they continued French subjects at this time; that in August of the year 1793, the French commissioners (Polverel and Santhorax) had proclaimed, at Port-au-Prince, the abolition of slavery, and the freedom of the negroes; which the national convention ratified in the February ensuing (4 Edw. History West Indies, 146, 219); that in consequence of this emancipation, the very negroes who had been purchased by the defendant had been taken from him; and that with a view to the calamitous situation of the colony, the following laws had been enacted by the French government:

1st. Extract from the law of the 6th of September, 1802. "Sec. 1. Until the 1st of Vendemaire, 16th year, all suits are suspended as well against the principal debtors as their securities for debts contracted prior to the 1st of January, 1792, for the purchase of real property, or of negroes." "Sec. 6. The creditors may, however, take all conservatory steps for the preservation of their rights, and even have the amount of their debts liquidated by judgments, but the execution thereof shall be stayed according to the first section."

2d. Supplement to the above law, of the 12th of April, 1803. The preamble states that doubts have arisen as to the construction of the 6th article; and the supplement declares: "Sec. 1. That by the words 'conservatory steps' (actes conservatoires) are not to be understood any acts, which would prevent the effect of the suspensive clause of the law, such as attachments of property, levies on real or personal estate, oppositions to the payment of rents, or other debts, &c. Sec. 2. Oppositions (in nature of attachments) made to the payment of principal sums due to the debtors, shall not prevent such payments, but the debtor shall be bound to make it appear within six months, that he has employed those capitals, in improving his St Domingo plantation, otherwise he will not be entitled to the benefits of the law."

Upon these premises, the defendant's counsel contended: 1st. That the contract of the parties was to be expounded and enforced according to the laws of France. 1 Bos. & P. 138; 3 Ves. Jur. 446; 4 Ves. Jur. 577; 1 H. Bl. 258; Id. 665, 690; 4 Term R. 184. 2d. That upon the general principles of the French law, the defendant was not liable to be personally arrested on this contract which does not constitute a commercial debt. Ord. of Com. p. 386, tit. 7, art. 1. 3d. That the right of action to recover the debt was expressly suspended by the law of the 6th of September, 1802; and it was as irregular to commence the suit, before the suspension had run out, as it would be to obtain judgment and issue execution.

The plaintiffs' counsel answered: 1st That this was a commercial debt, within the terms of the authority cited, for which a personal arrest was authorized by the law of France. 2d. That the law of the 6th of September. 1802, applies to original causes of action, and not to cases in which judgment had been previously rendered. 3d. That even where the *lex loci* governs the contract, it is the law of the country in which the suit is brought that must furnish the form of the remedy. *Karnes, Eq.* 567, 568; 2 *Vera.* 540; [*Hamilton v. Moore*] 3 *Dall.* [3 *U. S.*] 373; 1 *Bos. & P.* 139, 140. 4th. That the utmost benefit which the defendant can reasonably claim from the law of September, 1802, is a stay of execution till the specified period has elapsed: but, in the meantime, the plaintiffs should be permitted to proceed to obtain judgment, and to secure the defendant's appearance eventually to answer it.

THE COURT were clearly of opinion that the parties were bound by the law of the 6th of September, 1802; that the present case was within the law; and that the suspension of the law applied as well to the commencement of the suit, as to the issuing of the execution. The rule made absolute.

The defendant's counsel, proceeding on the grounds above stated, did not make, on this preliminary question, the objection, that the circuit court has no jurisdiction of a cause in which both parties are aliens; an objection that has repeatedly been adjudged to be fatal.