State of Georgia *v.* Brailsford *et al.*

Injunction.

State of Georgia *v.* Brailsford, *ante*, p. 402, re-affirmed and injunction continued.

Bill in equity. This cause was again brought before the court, upon a motion by *Randolph*, to dissolve the injunction which had been issued, and to dismiss the bill.(*a*) He assigned two grounds in support of his motion: 1st. That the state of Georgia had no remedy at law, to recover the debt in question: and 2d. That even if there was a remedy at law, there was no equitable right to justify the present form of proceeding. The motion was opposed by *Ingersoll* and *Dallas;* and after argument, the opinions of the judges (in the absence of Johnson, Justice) were delivered as follows.

Iredell, Justice.—It is my misfortune to dissent from the opinion entertained by the rest of the court upon the present occasion; but I am bound to decide, according to the dictates of my own judgment.

The state of Georgia complains, that having a right to the debt in question, that right has been discussed and overruled, without giving her an opportunity to be heard in support of it, though she applied to the circuit court for that purpose. It is another grievance alleged, that a writ of error has
*416] not been *instituted, when, all the facts appearing upon the record, the decision of the circuit court might have undergone a full and satisfactory revision, before the tribunal of the last resort. It is true, that this latter allegation is defectively set forth in the bill; for as a writ of error could not be sued out, without entering security, the state, to entitle herself to any benefit from the exception, ought, in strictness, to have tendered a security to the defendant in the inferior court. But still, if a writ of error had been brought, it appears to me, that it could only affect the original plaintiffs and defendants in the suit; and the state of Georgia could not be made a party to the record. In this situation, it must likewise be considered, Georgia had not a constitutional right to institute a suit, nor could she, in my opinion, be admitted as a party to a proceeding in the nature of an interpleader, in any but the supreme court.

The state, however, asserts a claim to the debt in controversy, by virtue of an act of confiscation; and the debtor admits that he ought to pay the amount of his bond, but is doubtful to which of the contending parties it ought to be paid. Now, without the equitable interposition of this court, I think there will be a defect of justice; for it is obvious to me, either that the state can have no remedy at law, or, at least, that the remedy at law will not be "plain, adequate and complete." Two positions have been taken, in opposition to this opinion: 1st. That if the state is entitled to the debt, she may maintain an action on the bond against the obligors: Or, 2d. That the state might bring an action of *assumpsit* for money had and received, &c., against Brailsford, if Brailsford had no right to recover or retain it. I will cursorily consider both these positions.

1st. In the first place, it is to be recollected, that the bond is merged in the judgment; and although the judgment is said to be generally binding only on the parties, yet it is good against all the world, until it is reversed

(*a*) See *ante*, p. 402; 3 Dall. 1.

in a regular course of law. To any other suit, for the same cause, Spalding might plead the previous judgment in bar; and the plea could only be defeated, by showing fraud or collusion. There is no pretence, however, for an imputation of that kind here; since Spalding set forth the title of Georgia, as fully as the state herself could have done: and would it not be monstrous, after a judgment rendered under such circumstances, to compel him again to pay the same debt? There is neither principle nor precedent for so harsh and oppressive a doctrine.

But if a suit could be maintained upon the bond, by the state, how is she to obtain possession of the instrument, without the aid of a court of equity? Suppose, it has been deposited with the clerk of the circuit court, that officer cannot deliver it to the state, without the judicial mandate of a superior *tribunal. Suppose, it remains in the hands of Brailsford, he can hardly be expected, voluntarily, to furnish his antagonist with [*417 the means of combat. In short, it is only by the authority of this court, sitting as a court of equity, either that the operation of the judgment, obtained at common law, against Spalding, can be prevented from becoming exclusive on the question of right; or that the state of Georgia can be enabled to maintain her claim, upon its merits.

2d. It is urged, however, that the state has another remedy at law, by an action of *assumpsit* for money had and received, against Brailsford. This is, indeed, the legal *panacea* of modern times; and may, perhaps, be beneficially applied to a great variety of cases. But it cannot be pretended, that this form of action will lie, before the defendant has actually received the money which the plaintiff demands. In the present instance, the money has not been received by Brailsford; and of course, he cannot be compelled to account for it to Georgia.

The case of *Moses* v. *Macferlan*, 2 Burr. 1005, if at all applicable to the points now in controversy, will be found more favorable, I think, to the opinion which I entertain, than to the opinion which it has been cited to support. From that case (which presents a most unconscionable conduct on the part of the defendant), it is to be inferred, as I have already stated, that a judgment is a perpetual bar against a second recovery for the same cause, unless it is tainted with fraud and collusion: But the King's Bench proceed, in deciding the question then before them, on this ground, principally, that the inferior court, the court of conscience, could not take cognisance of the collateral matter which constituted the defence; whereas, in the present instance, the matter pleaded by Spalding was perfectly within the cognisance and jurisdiction of the circuit court.

From this view of the subject, therefore, I am induced to conclude, that the state of Georgia has no remedy at law; and it is sufficient for an incipient exercise of the jurisdiction of this court, that she has shown a color of title to recover the money, and that the money is in danger of being paid to another claimant. I abstain from giving any opinion upon the judgment of the circuit court; but, certainly, I should never have consented to issue an injunction, if I had thought the legal remedy of the state was plain, adequate and complete. If the bill is sustained, the money will be preserved in neutral hands; and the court may direct an issue to be tried at the bar, in order to ascertain, whether the State of Georgia, or Brailsford, is the right owner.

BLAIR, Justice—My sentiments have coincided, until this moment, with the sentiments entertained by the majority of the *court; but a doubt *418] has just occurred, which I think it my duty to declare.

I do not conceive, indeed, that any judgment can be binding upon the rights and interests of a third person, who is not a party to the suit. The very nature of a bill of interpleader presupposes, that the party by whom it is exhibited, would be liable a second time, if he should either voluntarily, or otherwise, pay the money which he owes, to a wrong claimant. A judgment would not, therefore, in such a case, be a bar to the action of the claimant, who is legally entitled; and who might either bring detinue or trover for the bond, against the possessor of it; or, if he instituted an action of debt against the obligor, the court might, on a proper hearing, order the instrument to be delivered into his hands.

Presuming, then, that there was a remedy at law, I have hitherto thought that there was no ground for the interference of this court, as a court of equity. But, upon reflection, it appears, that if Brailsford, who is a British subject, should get the money, under the present judgment, and leave the country, there would be great danger of a failure of justice. It was for this reason, that the injunction was originally granted; and I think, the reason ought to carry us still further. Admitting, that Georgia has a complete remedy at law; her right, though not supported by herself, has been stated to the circuit court; and though the judgment in that case is not binding upon her, yet, in any future suit, brought by her against Spalding, who is bound by the judgment, a similar difficulty will arise; for the court would then be called upon to decide, in the absence of Brailsford (who could not be a party to the common-law suit), upon his claim, as well as upon the claim of Georgia.

Since, therefore, there is no other court that can bring all the parties before them, and do general and complete justice, it is my opinion, that the bill in equity ought to be sustained; and that the subject should be no further referred to a court of law, than to obtain an opinion upon the legal title to the debt in controversy.

JAY, Chief Justice.—All the court, except the judges who have just delivered their sentiments, are of opinion, that, if the state of Georgia has a right to the debt, due originally from Spalding to Brailsford, it is a right to be pursued at common law. The bill, however, was founded in the highest equity; and the ground of equity for granting an injunction continues the same—namely, that the money ought to be kept for the party *to *419] whom it belongs. We shall, therefore, continue the injunction until the next term; when, however, if Georgia has not instituted her action at common law, it will be dissolved.(*a*)

(*a*) An amicable action was accordingly entered and tried at the bar of the supreme court, in February term 1794 (3 Dall 1), when a verdict was given for the defendant (Brailsford), and the injunction was, of course, dissolved.