DECISIONS

IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERMS, 1873 AND 1874.

HABICH *v.* FOLGER.

A corporation of New York was declared to be "dissolved" by one of its courts, acting in professed conformity to a statute of the State; and receivers of its assets were appointed. A creditor of the corporation residing in another State sued it there, in "trustee process" (foreign attachment), by which he attached debts due by certain persons (known in the language of the process as "trustees") to the corporation. The corporation, the receivers, and the trustees all appeared by attorney; the trustees answered; and after the corporation and the receivers had contested the claim of the plaintiff so long as they could, the receivers withdrew their opposition, and a formal judgment was entered, which recited that the trustees were charged on their answer.

To a *scire facias* against the trustees to have execution on this judgment, the trustees pleaded that the corporation had been dissolved by a court of New York, to whose proceedings full faith and credit was due under the Constitution. The court below decided that the court of New York had acted in excess of its jurisdiction, and therefore that faith and credit were not due to its proceedings. This decision being the only error assigned, the judgment below was affirmed; this court holding that whether the judgment below was right or wrong was not a matter which concerned the trustees; since the fact of their debt and their obligation to pay it were admitted, and since in the original suit, where the corporation, the receivers, and the trustees were parties, judgment, after full hearing, and with the consent of the receivers, had been entered against the corporation, and the "trustees charged."

ERROR to the Supreme Judicial Court of Massachusetts; the case being thus:

The Revised Statutes of New York authorize the courts of the State, upon a corporation's mismanaging its affairs by doing certain things specified by the statutes, and plainly inconsistent with corporate duty, to declare it, on the petition of a corporator, dissolved, and to appoint receivers to take charge of and to distribute its assets.

In *professed* execution of the power thus given, the Supreme Court of New York did, on the 2d of February, 1866, declare that the Columbian Insurance Company, a corporation of the State, had mismanaged its affairs, and the court by its judgment declared the said corporation "dissolved" accordingly. The court at the same time appointed two citizens of New York, George Osgood and Cyrus Curtis, receivers of its assets.

In this state of things one Folger, resident in Massachusetts, a creditor of the corporation, sued the corporation in one of the Superior Courts of Massachusetts, in the form of suit known in that State as "trustee process;" a form apparently like that known in some other States as foreign attachment; a suit in which a writ issues against the defendant with a clause directing the sheriff to seize or attach his property, or whatever debts may be due to him, in the hands of persons named, and to summon them into court; these persons in Massachusetts being designated as "trustees," as elsewhere, sometimes, "garnishees." The trustees in the present suit were a certain Habich and others.

The record of that case showed the following facts, viz.: that the summons by which the suit was commenced was served on the insurance company in Massachusetts by levying on a chip as its property on the 18th of June, 1866 (a proceeding of form usual in the "trustee process"); that on the first Tuesday of July the corporation entered its appearance by its attorneys, and filed an affidavit of merits; that on the 30th of July it filed an answer (signed by Joseph Nickerson as its attorney) denying that it was a corporation, and denying the material allegations of the complaint; that

the trustees answered admitting a debt; that on the 3d of October, 1866, Osgood and Curtis (already mentioned as having been appointed by the court in New York, on its judgment of dissolution, receivers of the corporation) made an adverse claim, and filed a petition alleging that they were the receivers of the company, setting forth the manner of their appointment, alleging that all the credits, effects, and assets of the said company were vested in them, claiming the effects and credits in the hands of the said supposed "trustees," and praying to be admitted as parties to the action, this petition being signed by Edward Bangs as attorney; that on the 19th of October their prayer was granted, and that afterwards, in October, 1867, a case agreed on was presented to the court for its judgment, the trustee to be charged on his answer and the plaintiff to have judgment for the funds in the trustees' hands, if in the opinion of the court a judgment could be rendered against the corporation; but if the receivers now claiming had valid title to the funds as against the plaintiff, notwithstanding the admitted fact of a debt due him by the company, then judgment to be entered for the receivers or claimants.

There were thus before the court, the "trustees," the Columbian Insurance Company, by its attorney Bangs, and the receivers, by their attorney Nickerson; all, in short, who were in any manner interested as defendants in the transaction, or entitled to appear in the action.

At the January Term, 1869, the court ordered the following entry to be made, viz.:

"Trustees charged. Judgment for the plaintiff.

By the court:

G. C. WILDE,
Clerk."

At the following April Term a consent was filed by Mr. Bangs, attorney of the defendant, that the judgment be entered for the plaintiff for the sum of $3753, damages and

costs, dated June 10th, 1869. On the 12th of June is made the following entry:

"Claimants withdraw.*

E. BANGS,
Attorney.

J. C. DODGE,
Attorney for plaintiff."

(Filed June 12, 1869.)

On the 14th of June a formal judgment for the amount was rendered for the plaintiff, reciting that the trustees were charged upon their answer and that the claimants withdrew.

Upon *this* judgment Folger issued a *scire facias*, calling on the trustees to show why he, Folger, should not have execution against them. Habich and the other defendants (not denying their debt) pleaded—

That the judgment recovered by the plaintiff against the insurance company was "invalid," for that before the day on which the judgment was alleged to have been recovered, to wit, &c., the company had been dissolved by a decree of the Supreme Court of the State of New York, a copy whereof, duly authenticated, the plea alleged that the defendant now exhibited.

That by the Constitution of the United States it is provided that full faith and credit shall be given in each State to the judicial proceedings of every other State, &c.

The Supreme Court of Massachusetts held, upon an examination of the proceedings in the Supreme Court of New York, and of the statutes on which they purported to proceed, that the judgment of the said Supreme Court, declaring the corporation dissolved, was in excess of the jurisdiction of the court and therefore entitled to no faith and credit in Massachusetts as a judicial proceeding; and accordingly gave judgment for the plaintiff, the original attaching cred-

* In point of fact there had been another suit in "trustee process," and just like the present one, only that the trustee was a certain J. L. Priest. That suit was taken as the test suit, and after a vigorous contest in *it*, the court having decided in favor of Folger and against the receivers, opposition was no longer made in the present one. The claimants withdrew.

itor. From that judgment the case was brought here by Habich and the others, the debtor trustees.

The only record which, strictly speaking, was brought up here was the record of this suit on the *scire facias;* and the argument was chiefly on that; but reference having been made all along on both sides to the record of the suit in which the judgment on which the *scire facias* issued was rendered, a certified copy of the record of that original suit was handed to the court at the close of the argument, with the consent of both sides that it should be considered by it as part of the present case.

Mr. Dudley Field, for the plaintiff in error:

The only errors relied on are:

That the court erred in holding that the Columbian Insurance Company was not dissolved, and

That the company being dissolved, it had no right to enter judgment against it or the trustees.

The courts of Massachusetts had not the right to question the validity of the judgment of dissolution rendered by the Supreme Court of New York. That court had jurisdiction over the parties and the cause, and the record is, therefore, conclusive in Massachusetts.

In New York this judgment could not have been inquired into collaterally.

The Supreme Court of New York was authorized to declare the corporation dissolved.

[The learned counsel here went into an examination of the statutes of New York, and of the proceedings of the Supreme Court of that State dissolving the corporation, and contended that the dissolution was strictly according to the statute.]

If the corporation was dissolved no action could be maintained against it. A corporation dissolved is like to a person who is dead.

Mr. J. C. Dodge, contra.

Mr. Justice HUNT delivered the opinion of the court.

The record of the *scire facias* proceedings upon which the case was argued presents some questions requiring careful examination.

If we correctly apprehend the position of the case as stated in the record in the suit in which judgment was rendered,—and which was handed to the court at the close of the argument, with the consent of both sides that it should be considered by us,—there can be no difficulty in this case in reaching a correct conclusion.

In his first point the plaintiff in error says: "The only errors relied on are that the court erred in holding that the Columbian Insurance Company was not dissolved, and the company being dissolved, it had no right to enter judgment against it or the trustees."

The indedtedness of the plaintiffs in error and their liability to pay the amount of their notes to the defendant in error, as adjudged by the Massachusetts court, are thus admitted. But it is insisted that in reaching its conclusion, and as a part of the process of reasoning by which it was reached, the Supreme Court of Massachusetts erroneously held that the judgment of the New York court that the insurance company was dissolved was without authority and was void.

If this be conceded, of what importance is it to the plaintiffs? How does it concern them whether the judgment dissolving the insurance company was erroneous or whether it was correct? All they have to do is to pay the amount of their notes. This it is conceded that they are bound to do, and this the copy of the record in which the judgment was rendered shows that the insurance company and its receivers consented that it be adjudged they should and must do. Payment under such circumstances is a complete protection to them against a claim for repayment by the receivers upon a suit brought in the New York courts equally as in the courts of Massachusetts.

The copy of the record referred to shows that the trustees (the present plaintiffs in error)—the Columbian Insurance

Company, by its attorney, and the receivers, by their attorney, composing all who in any manner were interested in the transaction or entitled to appear in the action—were before the court; and that on the 14th of June a formal judgment for the amount is rendered for the plaintiff, reciting that the trustees are charged upon their answer, and that the claimants withdrew.

It is impossible to present the case of a judgment which would be more conclusive upon the corporation, and upon the receivers, than the case presented. They were parties in form and in fact. They contested the claim as far as contest was available, and when farther contest was unavailing the attorney for the receivers consented to the entry of the judgment, in terms withdrew their opposition, and a formal judgment was entered.

If the corporation was in existence, so that it could appear in a suit, it was concluded by the appearance of its attorney.* If it was not in existence, the receivers, representing the corporation and its creditors, were bound by the appearance of their attorneys. In either event the result is the same.

This judgment is binding upon the corporation and the receivers, and in the case of a suit brought by either of them against the trustees, would be an indisputable bar to their right of recovery, and this in any State in the Union. The appearance by authorized attorneys was equivalent to a personal service of process upon those parties.

Without intimating for a moment that an error was made by the Supreme Court of Massachusetts, it is too plain for discussion that it is immaterial to the plaintiff whether there was error or not.

It is a point in which they are not concerned. They have but to pay their debt, adjudged to be due in a proceeding which protects them against all the world.†

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* Murray *v.* Vanderbilt, 39 Barbour, 140.

† Magoon *v.* Scales, 9 Wallace, 31, 32; Christmas *v.* Russell, 5 Id. 290; Pruner *v.* United States, 11 Howard, 163; United States *v.* Yates, 6 Id. 605; Harris *v.* Hardeman, 14 Id. 334; Toland *v.* Sprague, 12 Peters, 300; Chaffee

This being the only allegation of error, the judgment must be

AFFIRMED.

CREIGHTON *v.* KERR.

A withdrawal, "without prejudice to the plaintiff," of a general appearance entered by an attorney, for the defendant, means that the position of the plaintiff is not to be unfavorably affected by the act of withdrawal; that all his rights are to remain as they then stood. Hence where there has been error in the beginning of an action, as *ex. gr.*, one of foreign attachment, by reason of want of notice required by statute to be given to the defendant, and an attorney appears generally for such defendant, and so cures the defect, the advantage thus given to the plaintiff is not taken away by a withdrawal declared to be "without prejudice" to him. And the court states that it does not intend to intimate that the result would have been different had the appearance been withdrawn unconditionally.

ERROR to the Supreme Court of the Territory of Colorado; the case being thus:

The statutes of Colorado relating to attachments enact:

"SECTION 54. Whenever a plaintiff in any civil action pending in any court of record in this Territory shall file in the office of the clerk of the court wherein such cause is pending, an affidavit showing that the defendant resides out of this Territory, it shall be the duty of the clerk to cause a notice to be published in some newspaper, published in the county in which such cause is pending, for four successive weeks prior to the next term of the court, which notice shall set forth and state the title of the court in which such action is pending, the nature of the action, and, if such action shall be brought to recover money, the amount claimed by the plaintiff, the names of the parties, and the time when, and the place where, the next term of court in which such action is pending will be held, and that if the defendants shall fail to appear at the term of court, and plead or demur, judgment shall be entered by default.

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v. Hayward, 20 Howard, 208; MacDonogh *v.* Millaudon, 3 Id. 693; Field *v.* Gibbs, 1 Peters's Circuit Court, 155; Com. & R. Bk. *v.* Slocomb, 14 Peters, 60; Eldred *v.* Bank, 17 Wallace, 551.