

Eng. Rep.]

ELLIS V. MCHENRY.

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COMMON LAW.

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ELLIS AND ANOTHER V. MCHENRY.

Bankruptcy—Effect of English composition deed in colony.

Where a debt arises in a country over which the Legislature of another country has paramount jurisdiction, a discharge by the law of the latter may be effectual in both countries.

Therefore, where a debt arose in Canada under a contract to be performed there, and the debtor obtained a discharge here under the Bankruptcy Act, 1861,

Held, that such discharge was an answer to an English action on the contract, for it was a discharge of an original debt, binding in Canada as well as here.

But, where the action here was on a judgment obtained on such contract in Canada,

Held, that a similar discharge obtained here after breach, but before judgment in Canada, was no answer to the action, for the Canadian judgment was final between the parties, and the defendant was estopped from saying that the discharge might have been pleaded there.

[19 W. R. 503—C. P.]

In the first action, *Ellis v. McHenry*, the declaration was on a judgment recovered in the Court of Queen's Bench for Upper Canada, against the now defendant by the now plaintiff.

2nd plea.—That the causes of action, in respect of which such judgment was recovered, were debts and liabilities included in an inspectorship deed under the Bankruptcy Act, 1861, made between the defendant and all his creditors, and in respect of which the plaintiff, as a creditor, was entitled to a dividend under the deed, which was binding upon him and all the creditors of the defendant.

2nd replication to the 2nd plea.—That the defendant ought not to be permitted to plead the said plea, because the matters alleged therein could have been pleaded in the action in the Queen's Bench for Upper Canada as a defence to such action; wherefore the plaintiff prays judgment if the defendant ought to be admitted after judgment has been obtained in the said action as in the declaration mentioned to plead the said 2nd plea.

Demurrer to the above replication, on the ground that the deed, if pleaded, would not have been a good defence to the action in Canada.

3rd replication to the 2nd plea.—That the judgment in the declaration mentioned was obtained in respect of money payable by the defendant to the plaintiff under a contract between them for the execution of certain works by the plaintiff and the payment of certain money in respect thereof by the defendant to the plaintiff; and at the time of making such contract the plaintiff was, and has ever since been, domiciled in Upper Canada, and the said contract was made, and was to be performed wholly in Upper Canada, and the said works were to be wholly executed and the said money to be paid in Upper Canada.

Demurrer to the above replication, on the ground that it did not show why the inspectorship deed was not a bar to the plaintiff's claim.

In the second action, *Ellis and another v. McHenry*, the declaration was on the *indebitatus* accounts

2nd plea.—The same *mutatis mutandis* as the second plea in the first action.

2nd replication to the 2nd plea.—That the debts in the declaration mentioned arose under and by virtue of contracts made in Canada, and

that the said contracts were wholly to be performed in Canada, and that the said debts were, under the provisions of the said contracts, to be wholly paid in Canada, and at the time when the first of the said contracts was made the plaintiffs were domiciled in Canada, and they continued so to be till the commencement of this action.

Demurrer to the above replication for showing no ground why the inspectorship deed was not a bar to the plaintiff's claim.

In last term, *Pollock, Q. C.*, (*Bompas* with him), argued for the plaintiff.

Quain, Q. C. (*Beresford* with him), argued for the defendant.

Cur. adv. vult.

Jan. 30.—*BOVILL, C. J.*, now delivered the judgment of the Court* as follows:—

The first of these cases was an action upon a judgment recovered by the plaintiff against the defendant in the Court of Queen's Bench in Upper Canada, the original cause of action having arisen upon a contract which was made in Upper Canada, and was to be wholly performed there.

The second action was not upon a judgment, but for a cause of action precisely similar to that in respect of which the judgment in the first action had been obtained.

In each case the defendant set up a deed operating as a discharge in bankruptcy under the English Bankruptcy Act, 1861 (24 & 25 Vic. chap. 134), which deed appears upon the proceedings to have been duly executed so as to be binding upon the creditors who had not executed it, and to have been so executed after the original cause of action in each case arose, though not after the recovery of the judgment on which the first action was brought. The principal and most material question that was argued before us was, as to the effect of this discharge upon the claims in these actions.

In the first place, there is no doubt that a debt or liability arising in any country may be discharged by the laws of that country, and that such a discharge, if it extinguishes the debt or liability, and does not merely interfere with the remedies or course of procedure to enforce it, will be an effectual answer to the claim, not only in the courts of that country, but in every other country. This is the law of England; and is a principle of private international law adopted in other countries. It was laid down by Lord King in *Burrows v. Femi* so. 2 Stra 733; by Lord Mansfield in *Ballantyn v. Golding*, Cooke's Bkcy. Law, 515; by Lord Ellenborough in *Potter v. Brown*, 5 East, 124; by the Privy Council in *Odwin v. Forbes*, Buck, 57; and *Quelin v. Moisson*, 1 Knapp, 265 b; by the Court of Queen's Bench in *Gardiner v. Houghton*, 2 B. & Sm. 743; and by the Court of Exchequer Chamber in the elaborate judgment delivered by Willes, J., in *Phillips v. Eyre*, L. R. 6 Q. B. 23.

Secondly, as a general proposition, it is also true that the discharge of a debt or liability by the law of a country other than that in which the debt arises, does not relieve the debtor in any other country: *Smith v. Buchanan*, 1 East, 6; *Lewis v. Owen*, 4 B. & Al. 654; *Phillips v.*

* BOVILL, C.J., WILLES, KEATING and BRETT, JJ.