AMERICAN COMPANY OF ARKANSAS *v.* WHEELER.

Opinion delivered March 31, 1930.

1. INTERPLEADER—RIGHT OF INSURERS TO FILE BILL.—Insurance companies holding a fund against which garnishments have been issued, to avoid a multiplicity of suits, are entitled to pay the fund into court and file a bill in the nature of an interpleader.
2. INJUNCTION—VESTED RIGHTS.—Although a court of chancery, having jurisdiction of a suit in the nature of a bill of interpleader could restrain the defendants from proceeding in other courts to have the same matters adjudicated, one of the parties could not be divested of rights already acquired by judgment in another court of competent jurisdiction.
3. JUDGMENT—CONCLUSIVENESS.—A question at law at issue before a court of competent jurisdiction, which was there judicially determined, is conclusively settled by the judgment, in so far as the parties to that action and the persons in privity with them are concerned.
4. JUDGMENT—TEST OF CONCLUSIVENESS.—In determining whether a judgment in a proceeding is conclusive on the parties in another proceeding, in which it is sought to restrain the former proceeding, priority of judgment is the test of conclusiveness.
5. JUDGMENT—CONCLUSIVENESS.—Where a judgment creditor of insured, claiming a fund due under fire insurance policies, instituted garnishment proceedings against insurance companies, their appearance imposed upon them the duty to follow the action to its termination, and charged them with notice of the proceedings.
6. FRAUDULENT CONVEYANCES—CONVEYANCE TO BROTHER-IN-LAW.—Evidence *held* to show that an alleged conveyance by a judgment debtor to his brother-in-law of furniture and fixtures in a store owned by the debtor was in fraud of creditors.

Appeal from Ouachita Chancery Court, First Division; *J. Y. Stevens,* Chancellor reversed.

STATEMENT OF FACTS.

On June 14, 1929, City of New York Insurance Company and Rhode Island Insurance Company brought suit

in equity against certain defendants, and each company asked to deposit the sum of $618.75 in the registry of the court to be distributed to the defendants who might be held to be entitled to receive the same, and asked that they be released from liability by reason of two policies of fire insurance issued to W. F. Conine and C. B. Wheeler. They also prayed that the defendants be restrained from proceeding any further on certain garnishments issued against them by the defendants. It was alleged and proved that on December 19, 1928, the fire insurance companies each issued its policy of fire insurance to the defendants, W. F. Conine and C. B. Wheeler, in the sum of $1,000, $150 of which was on a store building and the remaining $850 on the furniture and fixtures situated therein. On January 1, 1929, the insured property was destroyed by fire, and the liability of the insurers on the policies was fixed between the parties at the sum of $1,237.50 on both policies.

C. B. Wheeler filed an answer in which he claimed that he owned the furniture and fixtures, and that the parties settled on the basis that the sum of $1,237.50 should be paid as the amount of insurance due on the furniture and fixtures. Wherefore he prayed an order of the court directing that this amount be paid to him.

The American Company of Arkansas filed an answer alleging that it had had garnishments issued and served on the plaintiffs upon a judgment in its favor in the circuit court against W. F. Conine in the sum of $634.96. It was also alleged and proved by it that on the 7th day of May, 1929, judgment in the circuit court was rendered in favor of the American Company of Arkansas against plaintiffs in the sum of $697.15. Of this amount, judgment was rendered in its favor against the Rhode Island Insurance Company in the sum of $618.75, and in its favor against the City of New York Insurance Company in the sum $79.40. The judgment recites that the judgment in the garnishment proceedings was rendered upon the writ of garnishment issued, the answer to the garnishees, and the other evidence in the cause.

Subsequently, the American Company of Arkansas filed an amendment to its answer in which it alleged that the conveyance by W. F. Conine to C. B. Wheeler of the furniture and fixtures insured by the insurance companies was in fraud of its rights as a creditor of W. F. Conine. The evidence on this branch of the case will be stated and discussed in the opinion.

The chancellor found the issues in favor of Wheeler, and it was decreed that he was the owner of the insured property, and was entitled to have the sum of $1,237.50, which had been deposited in the registry of the court by the insurance companies, paid over to him, less certain small amounts which were directed to be paid to other parties not involved in this appeal. The American Company of Arkansas has duly prosecuted an appeal to this court.

Saxon & Warren and *H. G. Wade,* for appellant.

McMillen & Scott and *Carmichael & Hendricks,* for appellee.

HART, C. J., (after stating the facts). Counsel for the insurance companies claim that they were entitled to file a suit in the nature of a bill of interpleader in order to avoid a multiplicity of suits between the conflicting claimants to the fund agreed to be paid by the insurance companies on the fire insurance policies in question. They rely on the case of *Chicago, Rock Island & Pacific Railway Company* v. *Moore,* 92 Ark. 446, 123 S. W. 233, where it was held that a bill in the nature of interpleader is one in which the complainant seeks certain relief of an equitable nature concerning the fund in dispute in addition to the interpleader of conflicting claimants. In that case it was also held that where a creditor sued in a court of one county, and subsequently was made a party to a bill of interpleader in the court of another county, and restrained from proceeding further in the former suit, he should have appealed in the latter court and set up all his rights there, and cannot litigate his claim in the former court. That case is determinative of the right

of the insurance companies to file a suit in the nature of a bill of interpleader, but it is not conclusive of the rights of the parties under such a suit.

The chancery court having jurisdiction in the suit in the nature of a bill of interpleader, according to the usual practice, could restrain the several parties to the suit from proceeding in other courts to have the same matters adjudicated; but it by no means follows that one of the defendants could be divested of rights which he had already acquired by judgment in another court of competent jurisdiction. Such a doctrine would entirely destroy the conclusive character of judgments between parties and privies as to the matters which were the subject of litigation. It is a rule of universal application that a question of law in issue in a former suit, and which was there judicially determined, is conclusively settled by the judgment thereon in so far as the parties to that action and persons in privity with them are concerned. The matter concluded by the judgment could not be again litigated in any future action between such parties or privies in the same court or in any other court of concurrent jurisdiction upon the same cause of action. The priority of the judgment upon the same cause of action in the determining test. *Sallee* v. *Bank of Corning,* 134 Ark. 109, 203 S. W. 276.

On the 7th day of May, 1929, the American Company of Arkansas secured a judgment against W. F. Conine in the garnishment proceedings to which the insurance companies had been made parties. This was before the insurance companies filed their interpleader in the chancery court. The judgment in the garnishment proceedings shows that the American Company of Arkansas had already secured a judgment against W. F. Conine, and that the garnishment proceedings were based on that judgment. Service of process was duly had upon the insurance companies, and this fact was recited in the judgment. The record shows that the case was heard upon the writs of garnishment, the interrogatories filed,

the answer of the garnishees, and the evidence introduced at the trial. The judgment in the garnishment proceedings was final and appealable. *Wilson* v. *Overturf,* 157 Ark. 385, 248 S. W. 898; *First National Bank* v. *Farmers' & Merchants' Bank,* 159 Ark. 384, 252 S. W. 34; *Bank of Eudora* v. *Ross,* 168 Ark. 754, 271 S. W. 703; and *Woods* v. *Quarles,* 178 Ark. 1158, 13 S. W. (2d) 617.

It is claimed by counsel for the insurance companies that they did not know that this judgment was rendered. This is no excuse. The judgment shows that service of process was duly had upon the insurance companies, and that they filed an answer. Thus, their appearance to the action was secured, not only by service of process, but also by their voluntary appearance in filing their answer. It then became their duty to follow the suit to the end, and they must take notice of all subsequent proceedings to the end of the action. *Trumbull* v. *Harris,* 114 Ark. 493, 170 S. W. 222; and *Farmers' Mutual Fire Ins. Co.* v. *Defries,* 175 Ark. 548, 1 S. W. (2d) 19.

No excuse whatever is offered on their part for allowing the judgment against them in the garnishment proceedings if they had any valid defense thereto. That judgment was final and appealable; and, not having appealed from it, the insurance companies are concluded now by it in so far as the rights of the American Company of Arkansas are concerned. It would be no answer whatever to say that Wheeler was not a party to that suit, and that they might have to pay the same claim twice on that account. It was their duty to have asked that he be made a party to that suit to the end that the rights of all interested parties and the conflicting claims might be litigated in the same suit.

C. B. Wheeler has been allowed to file an answer in the present suit in which he claims the insured property, and the American Company of Arkansas has contested his right to the proceeds of the insurance policies, so far as it is concerned, by alleging that the conveyance to him by Conine of the furniture and fixtures was in fraud of

their rights as a creditor of Conine. We agree with the American Company of Arkansas in its contention in this respect. The record shows that W. F. Conine and C. B. Wheeler were brothers-in-law. The furniture and fixtures insured formerly belonged to a partnership of which W. F. Conine was a member. The firm became financially embarrassed, and owed appellant in this action. About two years before the insurance policies were issued, it is claimed by Conine that he transferred the furniture and fixtures to C. B. Wheeler in payment of an indebtedness he owed Wheeler. Conine was permitted to remain in possession of the furniture and fixtures for the most of the time after the sale. This, in itself, was a circumstance indicating fraud. *Valley Distilling Co.* v. *Atkinson,* 50 Ark. 289, 7 S. W. 137; *Shaul* v. *Harrington,* 54 Ark. 305, 15 S. W. 835; and *Burke* v. *Sharpe,* 88 Ark. 433, 115 S. W. 145.

Wheeler was an unmarried man and lived with Conine most of the time after the sale. He worked for him for a part of the time. Both Conine and Wheeler were witnesses in the case; and, while they both testified that the sale was made, they did not give any satisfactory account of any indebtedness due Wheeler. They only stated that there was an existing indebtedness evidenced by a note. The note was not introduced in evidence, and the nature of the indebtedness was not explained. The property was not insured until nearly two years after they claim that the sale was made, and it was insured in the joint names of Conine and Wheeler. They also claim that the building belonged to Conine, and that the fixtures belonged to Wheeler, and that the policies were made in their joint names for their convenience. The property was destroyed by fire a short time after the insurance policies were issued. Wheeler lived with Conine, and was bound to know of the financial embarrassment of the firm of which Conine was a member. When all the attendant circumstances are considered, we are led to the conclusion that the transfer was made by Conine to

Wheeler to defraud the creditors of Conine, and that Wheeler had actual knowledge of the fact or was in possession of such facts as would constitute knowledge. *Harris* v. *Smith,* 133 Ark. 250, 202 S. W. 244.

The result of our views is, in so far as appellant is concerned, that the decree must be reversed and the cause remanded with directions to the chancery court to order the amount of its judgment and interest paid out of the funds deposited in the registry of the court by the insurance companies. Inasmuch as no appeal has been prosecuted by any of the defendants except appellant, the decree in other respects will be affirmed; that is to say, the remainder of the fund after satisfying the claim of appellant will be distributed by the chancery court in accordance with its former decree. It is so ordered.