

New Jersey Court of Errors & Appeals

OSWALD SCHMIDT, et als.

Defendant in Error,

vs.

JOHN ZELLER, Sheriff, et als.

Plaintiff in Error.

In Error to
Hudson Circuit
Court.
No. 40½.

ANSWER TO SUPPLEMENTAL BRIEF OF PLAINTIFFS IN ERROR.

Waiving our objection to the presentation of the Supplemental Brief of the Plaintiffs in Error at this time, we respectfully urge :

The brief of plaintiffs in error is based entirely upon the decision of this court in the case of Cooper vs. Philadelphia Worsted Co., 2 Robbins, 624.

This case is not in point. It was a case involving the validity of a contract of conditional sale made in Pennsylvania between a vendor resident of Pennsylvania and a vendee resident of New Jersey of machinery having a *definite situs*.

And it was held that the vendor having made a contract of conditional sale which was not recorded, did not lose his rights when the machinery was subsequently brought into this state without his consent.

The point decided was that the *construction* of the contract must be according to the laws of Pennsylvania.

In this case :—

(1). The parties—grantor and grantee—were residents of Iowa.

(2). The property *had no situs* in New Jersey it was only in the possession of the carrier, the Pennsylvania R. R. Co., in course of transportation. It was temporarily stored awaiting shipping orders.

(3). The contract of transfer was made in Iowa.

(4). The attaching creditors are all of them non-residents of New Jersey.

The domicile of the contracting parties being the same, the place of contract being in Iowa, the property only being here temporarily, the attaching creditors being non-residents, our law cannot affect the transaction.

We desire to quote the language of Vice-Chancellor Van Fleet in *Receiver of State Bank vs. First National Bank of Plainfield*, 7 Stewart 450, 454.

“No state is bound to give effect to the law of a foreign state, when, to do so, will prejudice either the rights of its citizens or the interests of the state; but on the contrary, each state is bound to give its citizens the full benefit of all the remedies and securities provided by its laws.

“But where a transfer of property is valid by the *lex loci*, whether it be effected by the act of the debtor or by operation of law, no just rule of comity requires the courts of the

“state where the property happens to be located
 “to adjudge such transfer to be invalid, at the
 “instance of citizens of other states, simply on
 “the ground that it is incompatible with its
 “laws. For example: A transfer of property
 “located here, made by a citizen of New
 “York, which though inconsistent in sub-
 “stantial respects with the provisions of our law,
 “yet if valid by the law of New York will be
 “enforced here against everybody but the citi-
 “zens of this state. *This is now the established*
“doctrine of the courts of this state.”

Citing

Bentley v. Whettemore 4, *C. E. Green*,
 462.

Moore v. Bonnell, 2 *Vroom*, 90.

Moreover this case was tried below solely
 on the law of Iowa. The plaintiffs in error
 never claimed that the law of New Jersey ap-
 plied. They should not be permitted to raise
 this question now for the first time.

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