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Default Judgment on Scire Facias in Baltimore City - O'Neill & Co., Inc. v. Schulze

DEFAULT JUDGMENT ON *SCIRE FACIAS* IN BALTIMORE CITY

O'Neill & Co., Inc. v. Schulze[1]

Plaintiff-appellant obtained a judgment against defendant-appellee and fourteen years later caused a writ of *scire facias* to be issued out of the Superior Court of Baltimore City to revive it. The writ was issued on June 27, 1938 and made returnable July 11. On the day of its issue the sheriff read it to defendant but did not leave a copy of it. There was evidence that it had not been the practice of the Superior Court to make copies of writs of

[1] 7 A. (2d) 263 (Md. 1939).

scire facias but that it had been the uniform practice of the Baltimore City and Common Pleas Courts to furnish the sheriff with a copy to be left with the defendant. Defendant failed to appear, so a judgment of *fiat nisi* was entered, and, on August 8, the second return day after service, a *fiat executio* was issued. On August 17, still within the May term, defendant filed a petition (or motion) to strike out the original judgment, the sheriff's return on the *scire facias,* the judgment of *fiat nisi,* and the *fiat executio.* The motion was granted except as to the original judgment, which was not disturbed.

On appeal, *held:* Reversed as to striking out the sheriff's return on the *scire facias,* but affirmed as to the rest. *Scire facias* to revive a judgment is not an action but is a judicial writ and thus is not within the Rule Day Act.

This opinion challenges attention for what it ignores rather than for what it discusses. The substance of the decision is an affirmance of the lower court's action in striking out a judgment, which action was taken more than thirty days after the same was entered, but still within what was known as the May term. This conclusion was reached by construing the Baltimore City Speedy Judgment or Rule Day Act.[2] In order to understand fully the legislative intent which gave rise to this statute, it is necessary to read the act as an entirety.[3] Isolation of single sections of a comprehensive enactment may result in a misinterpretation of its scope.

The first act relating to more speedy recovery in cases arising in Baltimore City was passed in 1858 but was repealed in 1861[4] as a result of the disturbed condition of the country. It was limited to certain types of contract actions and provided for three terms, commencing on the second Monday in January, May and September but added the second Mondays in the other months as rule days. A party instituting an action covered by this act had the election of having service made returnable to the next

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[2] Md. Code Pub. Loc. L. (1930) Art. 4, Secs. 303-319.

[3] A note to Alexander v. Worthington, *et al.* 5 Md. 471, 473 (1854), in the Perkins Edition, collects the cases as authority for this rule of statutory construction. Some of the more recent cases enunciating the same principle are: Mitchell v. State, 115 Md. 360, 80 A. 1020 (1911); Foote v. Stanley, 117 Md. 335, 82 A. 380 (1911); Crouse v. State, 130 Md. 364, 100 A. 361 (1917); Tilly v. Jones, 158 Md. 260, 148 A. 434 (1930); Darnall v. Connor, 161 Md. 210, 155 A. 894 (1931); Baltimore v. Deegan, 163 Md. 234, 161 A. 282 (1932); Bickel v. Nice, 173 Md. 1, 192 A. 777 (1937).

[4] Md. Laws 1858, Ch. 323; repealed, Md. Laws 1861, Ch. 4. On the history in general see, 2 POE, PLEADING AND PRACTICE (Tiffany Ed. 1925) 385.

succeeding term or to the next succeeding rule day. If he elected to have it returned to one of the new rule days, the same proceedings could be had in the prosecution of it as would have been proper if it had been returnable to one of the three terms. It was further provided that if the defendant failed to appear on the day to which the writ was made returnable, judgment by default could be entered upon plaintiff's motion but if defendant appeared before the next rule day (or first day of the term when the writ was returnable at the next term) the default judgment would be stricken out. Failure to appear within this latter time subjected the defendant to the entering of a final judgment.

In 1864 the Act of 1858 was re-enacted[5] with some material changes as to the formal and procedural requirements of bringing suit under it but the types of cases to which it applied were not increased. It stated that the first day of each term and the second Monday in each of the other nine months should be return days. The Court of Appeals held[6] that a writ of *scire facias* to revive a judgment was not an original writ within the meaning of this statute and, since the language of the first act is no broader in this respect, it may be assumed that such writs were not within the meaning of that act either. It is to be noted, however, that neither of the early enactments mentions *scire facias* writs specifically and that their purpose was to accelerate the adjudication of only a restricted class of cases.[7]

In 1886 the entire Act of 1864 was repealed and a new, more comprehensive statute was passed, which is still the Rule Day Act of Baltimore City.[8] Some of its sections have been amended and a few have been added but most of them retain the exact wording of the Act of 1886.[9] The term Rule Day Act or Speedy Judgment Act is ordinarily applied to the sections which provide ". . . an expeditious method of reducing to judgment a valid and uncontested claim in cases where the amount was certain and liqui-

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[5] Md. Laws 1864, Ch. 6.

[6] Bridges and Woods v. Adams, 32 Md. 577 (1870).

[7] This act too was only optional. Ch. 6, Sec. 2 provided that: "Any person instituting an action in any of said courts, may at his election have his original writ made returnable to the next succeeding return day, or the first day of the next succeeding term."

[8] Md. Code Pub. Loc. L. (1930) Art. 4, Secs. 303-319.

[9] Secs. 305, 312, 314, and 316 have been amended and Secs. 313A, 315, 315A, and 315B have been added, but none of these changes affect the question involved here.

dated . . .",[10] but actually that is only a part of the Act of 1886 and the remainder is general in its scope.[11] In the principal case of *O'Neill & Co., Inc. v. Schulze* the Court discusses only those sections which precede the provisions for speedy judgments in liquidated contract cases. No mention is made of the later sections which are also general in their nature and which appear to have a direct bearing on the situation involved.

The opinion in the instant case holds that Sections 304 and 306 apply. Section 304 reads:

> "All original writs, writs of execution, attachment, replevin, ejectment, *scire facias* and *habere facias,* as well as all other writs and process issued from or returnable to any of said courts, which under the practice heretofore existing would have been returnable to the first day of the term, or to a return day, shall hereafter be made returnable to the first return day after the issue of the same, or may be made returnable to the second return day thereafter, if the party by whose direction the same was issued, or his attorney, shall so request in writing."

Section 306 reads:

> "After the execution of any writ or other process made returnable to a return day in either of said courts, the same proceedings may be had thereupon as if the same had been made returnable, and had been returned to a term of said court under the practice heretofore existing, except as hereinafter otherwise provided."

These provisions are interpreted to mean that the term rule was not abolished by the Act of 1886 and the only change, except in liquidated contract claims, was the addition of nine return days. Such an interpretation apparently does not fit in with anything in the Act, either expressly stated or by inference.

The Act begins by adding nine return days to those at the beginning of each of the three terms and then provides that:

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[10] Pittman, *The Maryland Speedy Judgment Acts* (1938) 2 Md. L. Rev. 305. This article contains an excellent discussion of that part of the Act of 1886.

[11] Md. Code Pub. Loc. L. (1930) Art. 4, Secs. 303-311 and 317-318 are general in application. Secs. 312-316 apply to liquidated contract claims only, and Sec. 319 concerns appeals from Justices of the Peace.

> ". . . the words 'return day', wherever used in this subdivision of this Article shall apply as well to the first day of each term as to the other return days herein enumerated."[12]

Such language can mean only one thing, i. e. that the distinction between return days and the first day of each term has been obliterated. This section alone would seem to express the intention of the legislature to do away with the old term rule which greatly retarded the final adjudication of suits at law. That this is the correct analysis of the statute does not depend on mere phraseology, however. Two sections of the Act substitute a thirty day rule for the term rule and the substitution is expressly made, not merely inferred, from the language. Section 317 provides:

> "Any action taken or order passed by any of said courts in relation to any judgment rendered by it, if taken or passed within thirty days after the entry of such judgment, or upon a motion or application made to it within said thirty days, shall have the same effect and force as it would have had under the practice heretofore existing in said court if taken or passed during the term, or upon a motion or application made during the term at which said judgment was entered, and no more; but any such action taken or order passed after the expiration of thirty days from the entry of any judgment, (unless upon a motion or application made within that time), shall have the same effect and force as it would have had under such previous practice, if taken or passed after the expiration of said term, and no more; and the said courts shall respectively have, for a period of thirty days after the doing of any act or thing in any cause before them, the same revisory power and control over such act or thing which, under the practice heretofore existing, they would have had over the same during the term at which it was done, and no more; and after thirty days from the doing of any such act or thing, the said courts shall have the same revisory power and control thereover, which, under such previous practice they would have had after the expiration of the term at which said act or thing was done, and no more."

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[12] Md. Code Pub. Loc. L. (1930) Art. 4, Sec. 303.

And Section 318 reads:

> "In all cases where the pre-existing laws direct or require that any act or thing shall be done in or by any of said courts during the same term at which some other act or thing may be done or happen, such first mentioned act or thing shall hereafter be done within thirty days after the doing or happening of said last mentioned act or thing."

That these provisions apply to all suits at law seems clear; their terms leave room for no other interpretation.

Thus it appears that there are three general changes which apply to all suits in the common law courts, including *scire facias*. First, service is returnable to the next succeeding rule day or, at the plaintiff's election, to the second return day after service and not to the first day of the next term; second, any action or order subsequent to the entering of a judgment must be taken within thirty days instead of within the term; and third, any act which formerly was required to be done within the same term as another act must now be done within thirty days. Clearly the Act applies to *scire facias* before trial and after judgment so that to hold that the time for entering judgment is governed by the former rules of practice appears to be completely inconsistent with the spirit of the statute. There would be no advantage gained in an earlier return of service if the case would not come up for trial any sooner than it would have under the old rules. Obviously the legislature did not intend that the defendant to a writ of *scire facias* should have an entire term to file his pleadings but the losing party should have only thirty days in which to present reasons why the court should strike out or modify its judgment. There is no practical benefit derived from the act unless all the provisions are given effect.

The construction that the Court of Appeals has placed on Section 306 is perfectly reasonable as far as the wording of that section alone is concerned but, as indicated above, such an interpretation fails to fit in with the other provisions. It is susceptible of another meaning, however, which does away with any possible conflicts among the various provisions. The language used by the General Assembly is capable of indicating that body's intention that the four month term be abolished and that a one month term be substituted for it. This is the construction which

the courts of Baltimore City have placed upon it and their ruling has received such universal acceptance that no case has ever been argued in the Court of Appeals on this particular point. In practice, for the fifty-three years that the statute has been in force, cases have been tried on the assumption that the writ of *scire facias* is governed by the Act. Even in the present case the point was not suggested. The contention of the defendant was that the sheriff's return was void because no copy of the writ was served as required by the Act and, as the Court pointed out, the plaintiff invoked the Act in its motion for a judgment by default but sought to show that it did not require service of a copy except when the suit was begun by filing a declaration. Apparently the plaintiff conceded that the Act applied to the time for entering the preliminary and final judgments.

If the only suits affected by this decision were those involving *scire facias* to revive a judgment there would be little reason to deplore it. After a judgment is so old that *scire facias* proceedings are necessary to keep it alive there is usually no urgent reason for speed in obtaining a new judgment. This is particularly true where the original judgment has become stale through the running of the Statute of Limitations. It is hard to imagine how any injustice would result, in such cases, from slowing down the judicial machinery. It is doubtful, however, whether this ruling can be confined within such narrow limits. The writer is informed that one of the lower courts in Baltimore City has already applied it to a suit involving an attachment on judgment. The Code section authorizing execution by way of attachment provides:

> "Any plaintiff having a judgment or decree in any court of law or equity in this State may, instead of any other execution, issue an attachment . . . which attachment shall contain the clause of *scire facias* required in an attachment against a non-resident or absconding debtor. . . ."[18]

As must have been involved in the recent case in one of the courts of Baltimore City, there is no distinction between a *scire facias* in an attachment and a *scire facias* to revive a judgment. Speed is essential in attachment

[18] Md. Code (1924) Art. 9, Sec. 29. Construed in Manton v. Hoyt, 43 Md. 254 (1875); and Johnson v. Lemmon, 37 Md. 336 (1873). See also 2 POE, PLEADING AND PRACTICE (Tiffany Ed. 1925) Sec. 693.

proceedings, but the doctrine of *O'Neill & Co., Inc. v. Schulze* requires the passage of two terms (as much as eight months) before judgment becomes final, instead of sixty days, which was the practice from 1886 to July, 1939. A consistent following of this decision will result in many classes of suits being read out of the Act so that the entering of final judgments will be greatly retarded. The outcome is that the four month term rule is, at least partly brought back to life, although this would appear to be opposed to the intention of the General Assembly of 1886, as well as to the practice which has prevailed for many years. Some further action, legislative or judicial, to correct the result of the principal case would seem to be desirable.