

Buckley Vs. Durant

Buckley Vs. Durant

SooperKanoon Citation : sooperkanoon.com/77876

Court : US Supreme Court

Decided On : 1785

Appeal No. : 1 U.S. 129

Appellant : Buckley

Respondent : Durant

Judgement :

BUCKLEY v. DURANT - 1 U.S. 129 (1785)

U.S. Supreme Court BUCKLEY v. DURANT, 1 U.S. 129 (1785)

1 U.S. 129 (Dall.)

Buckley

v.

Durant

Court of Common Pleas, Philadelphia County

June Term, 1785

This was an action of Trover. Non cul. pleaded, and issue. Afterwards the cause was referred, and report made, 'That plaintiff pay to defendant L.3; upon which payment being made, defendant to restore to plaintiff certain articles, for Trover and Conversion of which the action was brought.' Judgment nisi had been entered

on this report, and now August 13, 1785, Lewis, for the defendant, offered to state his objections to the confirmation of the report. Sergeant and Bankson objected to going into the argument, and insisted that judgment should be made absolute, because

Page 1 U.S. 129, 130

no exceptions to the report had been filed in writing, which they contended ought to have been done, within four days from the entry of the judgment nisi. Lewis admitted, that where the exceptions arose from facts, such as misbehaviour of the referees, but insisted, that where the objections arose from the face of the report, as in the present case, and depended upon construction of law, there was no such necessity. And accordingly The Court permitted him to proceed. He took three exceptions: 1st. The act of Assembly giving references by rule of Court in actions depending, puts the report of referees on the same footing precisely with the verdict of a jury. Now, in Trover a verdict can never be for restoration of the specific chattles, but for damages only, and such a verdict would be error: therefore he inferred the same law in the case of a report. 2ndly. The report, on the face of it, shows the action of the plaintiff to be illegal for Pawnee has a right to detain his pledge, until payment of the sum for which the pledge was given; and until such payment, Pawner can have no action to recover the thing pawned, or damages. Now the report finds L3, due from the plaintiff to the defendant, which at once defeats his right of action, and shows that judgment should be for the defendant. 3rdly. A report should be such a one as that the Court may give judgment and award execution thereon. Judgment cannot be for both plaintiff and defendant on one issue; and this report gives something to each It is a report on both sides Judgment and execution can be only for one.* The Court inclined strongly to be of opinion with Lewis, particularly on the first point; but no judgment was given, that the parties might if they would, accommodate the matter by a new reference: and, accordingly, it was afterwards referred de novo. Capias to June, 1784. The Bail bond sued to September, 1784; and December 1784, judgment was signed on the bail bond suit nisi special bail filed in 30 days. Default was made in filing special bail, and fi: fa: moved to June 1785. Footnotes

[[Footnote *](#)] Mr. Lewis mentioned, that on a former argument of this cause, this exception was combated by an observation that even if judgment could not be entered on the report according to the common forms, yet the reference being made under the eye of the Court, they would grant an attachment to compel compliance with the report, and the case of Ralston vs Stewart was mentioned, where the Supreme Court it was said, established this point. Time had been given to the plaintiffs Counsel to search for notes of this case; and no note being now produced, Mr. Lewis said, that although he was concerned in that cause with the gentleman who cited it (Mr Sergeant) yet he could not remember that any such point had been adjudged, and contended that the act of Assembly gave no such authority, and that no instance of such an attachment had ever been known in our practice.