

Brown Vs. Scott

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Court : US Supreme Court

Decided On : 1785

Appeal No. : 1 U.S. 145

Appellant : Brown

Respondent : Scott

Judgement :

BROWN v. SCOTT - 1 U.S. 145 (1785)

U.S. Supreme Court BROWN v. SCOTT, 1 U.S. 145 (1785)

1 U.S. 145 (Dall.)

Brown

v.

Scott et al.

Court of Common Pleas, Philadelphia County.

September Term, 1785

Rule to show cause why the report of referees should not be set aside. The facts were these: Four actions had been brought upon four promisory notes, and the parties, being willing to refer them, by a written agreement entered a fifth action on the docket, in order to take in another note, which had become due since the

return of the preceeding writs; and accordingly the whole were referred to persons nominated by the Court, a rule for that purpose being taken out in each action. The parties were heard before the referrees, and the report agreed upon, when a difficulty occurred, how to apportion the sum that was found due, or in what manner to make the report, if it was not apportioned. The referrees, therefore, applied to a gentleman of the law, who advised them to connect the five rules, and make one general report, for the whole sum. Conformably to this advice, the following report was made. 'We the referrees appointed in the annexed five rules of Court to hear and determine the matters in variance between plaintiff and defendants in the five several actions commenced by the former against the latter, do adjudge that the defendants are indebted to the plaintiff L1301, 3, 11, and that the same ought to be paid accordingly.' All the referrees signed the report, and two of them attended in Court, and gave testimony, that both parties were fully and patiently heard, and no objections were made, on either side, to the mode of proceeding. Nor was there any suggestion in the course of the argument, that the referrees had acted with partiality, injustice, &c.;

The motion was supported by Ingersol, Coulthurst and Heatly, for the defendants, and they contended, that the report was neither certain, mutual, nor final.

1st. For that the report says L1301, 3, 11, is to be paid 'accordingly' accordingly to what? the mode of payment was a chief part of the dispute; and this was left uncertain.

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2d. For that the report contains no directions that these notes should be delivered up; and as defendant cannot apply to a Court of Chancery, as he might in England, for an injunction, they may still be circulated, and in the hands of a bona fide indorsee, so that the defendant may be compelled to pay the money over again; consequently the report is neither mutual, nor final, Cro. F.315.Cro. C. 112. 1 B.M. 304. 2 B.M. 1224. Doug. 362. 5. Bae. 289. 313. 3d. The reports of referrees under the act of Assembly are acknowledged to be different from awards at common law; but in fact there is little difference between them and verdicts. If,

therefore, these actions had been tried by a jury, and a verdict given similar to this report, no judgment could be given on it. Co. Litt. 227. Hob. 49. Stra. 1024. For on what action can the Court award execution, or how can they apportion the sums? Wilson, Sergeant and Sitgreaves, for the plaintiff, were desired by the Court to confine themselves to the last objection, as the first was not supported by testimony; and with respect to the second, it would upset too many reports, were the objections of want of mutuality and not being final, upon such grounds, to defeat the report. Taking up, therefore, the third objection, they argued that the referees not being charged with partiality or misconduct, the objections to the form of the report, must find a cold reception with the Court. If judgment cannot be entered upon the record as it stands, the Court may interrogate the referees and divide the sum; or they may allow the plaintiff to sue out execution in one action, and release the others, or by their own authority, the Court may interpose, and consolidate the actions. 1 Stra. 420. But, in fact, it was contended, that the actions already consolidated by the consent of the parties in the filed agreement; which is surely as much a part of the record, as a verdict, or a report; and by the submission of all matters in variance, the cause of action in each of the actions, is submitted in every one of them. Hob. 54. 12 M. 234. Stra. 514. 3. Bac. Abr. 288. Ingersol in reply. Awards at common law differ so widely from reports under our act of Assembly, that scarce any authority upon the subject of the first, is applicable to the second. In the first case, terms may be imposed before the Court will grant attachments; but here the report is equivalent to a verdict, and the sole point now, is, whether, if it were truly a verdict, judgment could be entered upon it. It was not discovered 'till late in the argument that the parties themselves had consolidated the actions; but upon the examination of the agreement nothing will appear that shows that intention, or produces that effect. It enumerates all the four actions, says that rules (in the plural) shall be entered in these several actions; and then there is a fifth action entered in this very agreement, which it is subsequently and separately agreed to refer. At least, therefore, this last action is not consolidated.

To discontinue, or release four, and sign judgment upon the myth, would be impossible, because the report expressly comprises more than the fifth action was brought for. And to call upon the referees, and by their assistance divide the sum, would be an illegal stretch of power, which was not to be apprehended from the court. Nor, as to the point of consolidation, has the court authority to do more than grant imparlances in some of the actions, to induce the party to consent that the trial of one shall decide the rest, which would be no relief in the present case.

On the 15th of November the President delivered the opinion of the Court as follows.

Shippen, President.

The justice and fairness of the transaction, on the part of the plaintiff, is so obvious; and the consent of the parties to consolidate the actions, is so naturally implied from the whole of the proceedings, that my brethren * think the report ought to be confirmed.

For myself, I doubt the legality of it, because I do not see how it is possible to enter judgment upon the report so as to avoid error. The consolidation of actions is intended to save expense, and might have been ordered by the Court on motion; but this agreement of the parties does not appear to me to amount to a consolidation, there being five several rules of reference in the five several actions; and though, indeed, the referees have undertaken to consolidate them, I much doubt their authority so to do. Instead of finding a gross sum due on all the notes, they might have found what was due on each note, and have reported the several sums on the separate rules of reference. However as my brethren think the report ought to stand, let it be confirmed, and the plaintiff may make up the record as he thinks safest.

Report confirmed. Footnotes

[[Footnote *](#)] Fleeson and William Rush, Justices.

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