

Hamilton vs. Callender'S Exrs

Hamilton vs. Callender'S Exrs

SooperKanoon Citation : sooperkanoon.com/77978

Court : US Supreme Court

Decided On : 1789

Appeal No. : 1 U.S. 420

Appellant : Hamilton

Respondent : Callender'S Exrs

Judgement :

HAMILTON v. CALLENDER'S EXRS - 1 U.S. 420 (1789)

U.S. Supreme Court HAMILTON v. CALLENDER'S EXRS, 1 U.S. 420 (1789)

1 U.S. 420 (Dall.)

Hamilton, Executor

v.

Callender's executors.

Supreme Court of Pennsylvania

April Term, 1789

This action being referred by consent, the following report was made: 'The Referrees upon full consideration of all the circumstances, are doubtful as to the law upon one point, and have agreed to make their award special, subject to the opinion of the Court.

'The case submitted to them appeared to be as follows: On the 16th of March, 1773, Robert Callender was indebted to James Hamilton in the sum of L2120. sterling, for which he gave to the said James Hamilton, a bond and warrant of attorney, and a mortgage upon an estate in the county of Cumberland. It appeared that interest was paid thereon to March 1776, and that receipts for such payments are indorsed on the mortgage.

'Robert Callender died, and, sometime after, his executors sold part of the mortgaged premisses to Mark Bird, who undertook to pay off the principal sum, together with the interest that should become due after the date of his purchase.

'It is agreed that James Hamilton remitted one year's interest to the executors of Callender; and that Mark Bird gave his bond bearing date the 3rd of May, 1783, to James Hamilton for L651. sterling, being the whole of the interest then due on the mortgage, exclusive of the year's interest remitted. No discharge was given upon the mortgage either for the year's interest remitted, or for the amount of the bond: nor does it appear, that the executors of Callender had any notice of the bond, or that they had been applied to for the payment of any interest after the sale to Bird.

'Bird has never paid any part of the principal, or interest; and, in the end of the year 1784, a Scire Facias issued on the mortgage; but the sale was postponed from time to time; and, in the meantime, Bird became a bankrupt. On the 19th of May, 1787, however, the estate held by Bird was sold under the Scire

Page 1 U.S. 420, 421

Facias for L5,500: and another part of Callender's estate was sold under the same execution for about L1000. 'The point which the Referrees wish to submit to the opinion of the Court is: 'Whether James Hamilton by taking the bond from Bird, under the circumstances stated, has exonerated the executors of Callender from the payment of L651. sterling, the sum for which the said bond was given? Or,

'Whether the mortgaged premisses are bound to the executors of Hamilton, notwithstanding the said bond? 'If the Court shall be of opinion that the estate of Callender is exonerated from so much of the interest as the bond of Bird was given for, then we find, that there was due to the executors of Hamilton on the 19th of May last (when the premisses were sold) for principal and interest upon the mortgage, L4988. 18.2. current money of Pennsylvania. But, nevertheless, if the Court should so determine, the Referrees award, that the whole of the money arising from the sale of that part of the mortgaged premisses belonging to Bird, and which is stated to have sold for L5,500, should be applied, in the first place, to the payment of the aforesaid sum of L4988. 18. 2. and the residue to so much of Bird's bond to Hamilton as it will extend to. 'But, if the Court shall be of opinion, that the executors of Caliender are not exonerated from the payment of so much of the interest as the bond aforesaid specifies, then we award, that there was due from the Defendants to the Plaintiff on the 19th day of May last, the sum of L6264 18. 7. current money aforesaid.' Whether the bond given by Mark Bird to the Plaintiff's Testator operated as an extinguishment of so much of the money due upon Callender's mortgage, was the question? And it was argued in July Term 1788, by Lewis and Wilcocks, for the Plaintiff; and by Wilson and Brad ord, for the Defendant. For the Plaintiff, it was contended, that the bond in question was taken merely as a collateral security, in order to entitle Hamilton to interest upon the amount. The Report (though it is sufficient to give judgment upon) does not say that it was received or given in satisfaction; it is, therefore, to be presumed, that no evidence of that kind was submitted to the Referrees, and the Court must determine the law upon the facts contained in the Report. But, even if the Report were amended, and it were expressly set forth, that the bond was given and received in satisfaction, it would not be an extinguishment of the preceding demand, founded on the mortgage. The rule is clear, that a subsequent security of equal dignity is not an extinguishment, so as to annihilate the party's remedy upon his original contract; for that purpose the security must be of a higher nature. Nor will the mere improvement of the security, by adding another surety, amount to an extinguishment.

Cro. J. 579. Hob. 68. 69. Moor 872. Cro. C.85. 86. See 2 Bac.Abr. 452. Whether, indeed, by accord or not, one bond is not an extinguishment of another; 3 Lev. 55. Brownl. 47.71. Nay, the party's own agreement to accept is not sufficient; for, it must appear to be a reasonable satisfaction. 1 Stra. 426. 7. The bond given by Bird was certainly not of a higher nature than the previous security; it was, in fact, inferior; for, a mortgage is a security on real estate, a bond is only personal; and, in the case of a bankruptcy, though neither bonds, or judgments, stand against the general creditors, yet mortgages do. For the Defendants, it was urged, that the legal doctrine of collateral extinguishments does not apply; for, some cases go further than those produced, and show that an estate worth a million, would not discharge a bond conditioned for the payment of L10. Yet, at common law, the doctrine appears to differ from what the adverse counsel wish to establish; Co. Litt. 212.b. though, it must be admitted that many subsequent decisions have greatly deviated from the principle laid down by Lord Coke, that the party's acceptance of any thing, provided it be not of less value than the original contract, in satisfaction, is sufficient. But, notwithstanding the admission that the authorities seem now to extend so far, that a bond from the same party encreasing the sum, or, even where another surety is added, will not be a discharge of a prior obligation; yet none of them are so extravagant as to assert, that it is no discharge where the advantage of converting interest into principal has been obtained; which is in itself a reasonable satisfaction to ground the extinguishment; and, independent of the cases, the broad principle of equity declares; that, when a party is bettered by his bargain, he shall be bound by it. But, it appears from the report of the Referrees, that there was an absolute giving and taking of the bond; and, as the payment must be according to the will of the Defendant, Cro. E 68. if Bird gave the bond in question in payment, we show that it was accepted, and it is no matter whether that acceptance was in satisfaction, or not, since the bond must be received to the intent with which it was given. 1 Ld. Raym. 60.61. The case, however, does not, after all, depend upon the doctrine of extinguishment, but upon the act for defalcation; by virtue of which the acceptance of the bond in question may be given in evidence by way of set- off against the Plaintiff's demand. 1 State Laws. 48. For the Plaintiff, in reply, it was insisted, that the object of the act of defalcation was to prevent a multiplicity of suits, and that it could have no possible effect upon

the general question, whether Bird's bond operated as a payment or extinguishment pro tanto of the preceding debt? This question has been agitated in England as well since as before the statute, and the present idea has never been suggested. The act of Assembly speaks of two or more being mutually indebted; and, although it authorizes a defalcation,

Page 1 U.S. 420, 423

it does not define what shall be deemed a payment or extinguishment. There is no fair ground to assert that Hamilton received an adequate satisfaction by converting the interest into principal; for, he was entitled to have his interest punctually paid; and the books of Chancery have gone so far as to declare, that, where money is in arrear upon a mortgage, it was not usury to take interest upon the interest. In the case from Cro. J. 579. indeed, the interest was also added to the principal; but this the Court did not consider a sufficient bar. Nor was Hamilton benefitted in respect to time; for, the bond was given, not to shorten the period of payment, but to protract it; as the money was actually due, and ought to have been previously paid. After considering the case and arguments, the Chief Justice, at the present term, delivered the opinion of the Court:

M'Kean, Chief Justice. The case appears to be this: That the Testator of the Defendants gave a mortgage to the Testator of the Plaintiff on four several tracts of land. The heirs of the mortgagor sold the equity of redemption of three of these tracts to Mark Bird, who, afterwards (on the 3rd day of May 1783,) executed a bond for L651. to the mortgagee; and this bond, being for the amount of the interest then due upon the mortgage, also bore interest. No receipt, however, for the bond, for the interest, nor, indeed, any minute of the proceeding, was entered upon the mortgage; nor has any express proof been offered that the bond (upon which there has not been any thing paid) was accepted as a satisfaction pro tanto of the money due on the mortgage. The three tracts of land conveyed to Mark Bird have been sold in order to satisfy the mortgage; but, proving insufficient, the question now arises, on the circumstances which I have stated, whether the bond given by Mark Bird is to be taken, either in law or equity, as a payment, discharge, or recompense, for so much of the mortgage money? The Court, having maturely

considered the case, are of opinion that the bond is not a payment pro tanto of the mortgage money: for which opinion they will content themselves with declaring the general principles, and referring to the authorities whence those principles are deduced. 1. First, then, one judgment cannot be pleaded in bar of another, which is of equal nature and dignity, no more than one bond, or obligation, can be pleaded in bar of another. Cro. E. 817. 2 Bat. Abr. 552. 2. In the second place a bond, which is no satisfaction of another bond, cannot be deemed a satisfaction of a mortgage, which is a security of a higher nature. To render it a satisfaction, it ought to better the Plaintiff's case, in point of safety, and expedite the time of payment; for, a bond with sureties will not be a satisfaction of one without, unless the time of payment is thereby

Page 1 U.S. 420, 424

shortened. 1 Stra. 427. 1 Brownl. 47. 71. Hob. 68. 69. 1 Mod. 225. 2 Mod. 136. Cro.I.579. Cro. C. 85. 86. 3 Lev. 55. 1 Salk. 124. 1 Burr. 9. 2 Wils. 87.

3. And, in the third place, as there is no entry of the bond in question upon the mortgage, showing that it was received in payment or satisfaction of the interest then due, nor any proof that it was so intended by the parties, a presumption naturally arises, that the bond was merely taken as a collateral, or supplementary, security; and no debt, or duty, can be extinguished, but by a security of a higher nature than the first.

For these reasons, we decide the question submitted by the Referrees to the Court, in favor of the Plaintiff, and direct judgment to be accordingly entered upon the report.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com