Field, for Use of Oxley Vs. Biddle

Field, for Use of Oxley Vs. Biddle

SooperKanoon Citation : sooperkanoon.com/78044

Court : US Supreme Court

Decided On : 1792

Appeal No. : 2 U.S. 171

Appellant : Field, for Use of Oxley

Respondent : Biddle

Judgement :

FIELD, FOR USE OF OXLEY v. BIDDLE - 2 U.S. 171 (1792)
U.S. Supreme Court FIELD, FOR USE OF OXLEY v. BIDDLE, 2 U.S. 171 (1792)

2 U.S. 171 (Dall.)

Field for the use of Oxley, et. al. v. Biddle

Supreme Court of Pennsylvania April Term, 1792

This was an action of debt, on a bond dated the 1st of May 1786; conditioned for the payment of L 1000, on or before the 1st of Nov.; and the defendant pleaded payment, with leave to give the special matter in evidence. The defence set up on the trial was, that it had been agreed by the parties, that the bond should be void, unless Oxley & Hancock, merchants residing in England, transmitted a ratification of certain articles of composition within six months: and the following testimony was given: 1. The articles of composition, dated the 3rd of May 1786, stating, that

the plaintiffs have agreed with I. Collins (who was indebted above L 5000 sterling, to Oxley & Hancock) that Collins shall pay L 1000 to Oxley & Hancock, 'provided that this agreement of composition shall not take effect as to a full discharge of Collins, until Oxley & Hancock shall have transmitted their ratification to America.' 2nd. A receipt by one of the plaintiffs, for the bond in suit, 'being given in consequence of the above agreement' altho' dated the 1st of May, 86. 3rd. A letter dated 27th Dec. 1786, from Field, acknowledging a demand made upon him by Biddle, for the bond in question. The defendant then offered William Bell as a witness to prove, that at the time the bond was executed, it was agreed that it should be void, if the ratification did not arrive in six months. The testimony was objected to; but after some argument, the point was reserved, and became the subject of discussion at the present Term. Ingersoll, for the Plaintiff-The intention of the parties must be construed by the bond and the indenture. The attempt is now made to explain away or vary a written agreement; to shew that to be conditional, which the writing imports to be absolute. Bac. Elem. 90. 4 Bl. Com. 483. 9. No parol averment varying the condition of a bond, shall be admitted as a plea. Cow. 47. 1 Esp. 247. The exceptions do not reach this case; they may be reduced to three general heads. 1 To rebut an equity. 2 To ascertain a person or thing which cannot be ascertained by the writing itself. 3 When a clause is left out by fraud or mistake. The case in 3 Atk. 77. was of a circumstance which could

not take place in the writing. Ib. 388 was suggestion of fraud and is referred to in 2 Bl. Rep. 1241. 1 Vez. 457. was a mistake rectified by the minutes. The rule is always adhered to, unless there is fraud. The drawer of the articles there did not pursue the intent of the minutes. 2 Vez. 375. Evidence is never admitted to contradict a written agreement; but a subsequent agreement may. The case of Harvey v. Harvey, referred to in Fitz. 240, was that of a deed made to save an estate from sequestration, and this could not be inserted. But without such foundation it would not be admissible. Pow. on Powers, Intr. p. 14. The following cases shew that the exceptions are those only which are stated above. 2 Atk. 575. 8 Co. 155. 2 Atk. 239. A blank left in a will, and no parol evidence admitted. 2 Atk.

383. Ib. 373. Declarations made at the execution of a will refused. 1 P. Wms. 3. The rule is laid down. 5 Bac. 362. 2 Vern. 98. 1 Brown. Ch. 93. 94. Pow. on Cont. 432. 1 Dall. Rep. 83. But, by the Court: The principle of this case has often been determined. The greatest injustice would prevail if such testimony were rejected.

Bradford, Justice: I concur with the Court, upon the authority of Hurst v. Kirkbride. I have never, it is true, been fully satisfied with that case: It goes one step beyond that of Harvey v. Harvey; and much farther than any other in the English books. Yet, as it has often been recognized in this Court, I feel myself bound by its authority.* Footnotes

[Footnote *] On the trial of the cause above reported, the plaintiff's counsel offered as a witness John Field, the nominal plaintiff, the suit being stated, and proved to be, for the benefit of Oxley & Hancock. They urged, that he was a mere trustee, without any interest whatever in the event of the cause. In M'Clenachan v. Scott, lately determined in the Common Pleas, it appeared, that after the suit was brought, the plaintiff had become a bankrupt, but the assignees carried on the cause; and the plaintiff was admitted as a witness, reserving the point as to his competency; which was afterwards on full argument determined in the affirmative. A distinction was taken between a voluntary assignment of a chose in action, and one by operation of law. So in M'Comb v. Cox, 1 Dall. Rep. the plaintiff was held to have no power over the suit, and therefore he could not be liable to costs. Lewis in reply, insisted, that M'Clenahan & Scot went entirely on the compulsive assignment, and did not apply at all to voluntary assignees. The case in Gibb. 120. is not supported by the cases cited. In that in Mod. there referred to, the executor was not a party. In 3 P. Wms. 181, the opposite doctrine is laid down. In this case, the Court would not have compelled the plaintiffs to lend their names; they might have assigned. Here the plaintiffs are certainly liable to costs; and in Halden v. Fisher, executor, the defendant was refused, tho' he had no interest in the event, and offered to pay all the costs into Court. Ingersoll. Two principles were determined in M'Clenachan v. Scott. 1. That a nominal plaintiff is not for that reason alone to be rejected. 2. That a plaintiff is not in all cases liable to pay costs. 1 Barnes n. 104. A Prochien Ami is compellable to pay costs; but if the plaintiff is

not admissible, neither can a mere trustee be received. The Court inclined to reject the witness, but Justice Shippen, doubting, they agreed to admit him if the plaintiffs insisted, reserving the point. He was admitted, accordingly, but the verdict being for the defendant, no motion was made. See 1 P. Wms. 290. 2 Atk. 229. 3 Atk. 954 604. 2 Vez. 219. Doug. 134. 2 Wils. 373.