Fitzgerald Vs. Caldwell

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Court : US Supreme Court

Decided On : 1793

Appeal No. : 2 U.S. 215

Appellant : Fitzgerald

Respondent : Caldwell

Judgement :

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U.S. Supreme Court FITZGERALD v. CALDWELL, 2 U.S. 215 (1793)

2 U.S. 215 (Dall.)

Fitzgerald v. Caldwell

Supreme Court of Pennsylvania April Term, 1793

This suit was instituted by the plaintiff, for the use of Moore & Johnson against Andrew Caldwell, the surviving partner of Andrew and James Caldwell. Vance, Caldwell, and Vance, had assigned to Moore & Johnson, a debt due to them from Andrew, and James Caldwell, and those assignees employed the plaintiff as their agent to recover the amount. The defendant, accordingly, gave Fitzgerald a note dated the 8th of April, 1782, for L 5009 5 1, 'provided so much appeared due to Vance & Co. on a settlement of accounts.' The matter in dispute was agreed to be

referred; and the referees reported 'that there was a sum of L 4,016 19 4 due, on the 8th of April 1782, from Andrew and James Caldwell, to Robert Vance, surviving partner &c.; and further that there was a sum of L 5009 5 1 due from the defendant to the plaintiff, on a note from Andrew and James Caldwell, to the plaintiff, dated the 8th of April, 1782.' Upon this report, judgment nisi was entered; and, afterwards, it was agreed, 'that the judgment so entered should be absolute; but that it should wait the trial of certain foreign attachments (which had been laid, before the commencement of this suit, by supposed creditors of Vance & Co. upon their effects in the hands of the defendant) and that if any thing should be recovered thereon against Andrew Caldwell, the same should be defalked out of the said sum, for which judgment was rendered, and execution issue for the residue only.' It appeared, that the attachments in question had been laid by the defendant himself, in the name of another person, and without any authority, but what might be inferred from a general correspondence; and, in one instance, an issue being formed and tried, on the plea of nulla bona, the verdict was in favor of the garnishee. On the 9th of April 1793, the defendant's Counsel (Serjeant, Ingersoll, and M'Kean) moved to stay further proceedings, upon payment of the principal sum found due by the referees, and costs. The motion was opposed by Tilghman, Wilcocks, and Lewis for the plaintiff; who contended, that under the circumstances of this case, interest ought to be allowed.

M'Kean, Chief Justice. It is clearly the general rule that a garnishee is not liable for interest, while he is restrained from the payment of his debt, by the legal operation of a foreign attachment. But it is said by the plaintiff's Counsel, and I assent to the proposition, that if there is any fraud, or collusion; nay, if there is any unreasonable delay occasioned by the conduct

of the garnishee himself, such cases will form exceptions to the general rule. In the present instance, however, there is no proof of fraud, or collusion; nor of any wilful procrastination on the part of the garnishee; and fraud can never be presumed. It is true, likewise, that no express authority was given for laying the attachments; but an implied authority appears in the correspondence that has been produced:

And the defendant is not answerable for the event. I am, therefore, of opinion that interest ought not to be allowed.

Shippen, Justice.

Evidence will often strike different minds in a different manner. It does not appear to me, that there was sufficient authority for instituting the foreign attachment; but, on the contrary, that it was done officiously, and at the instance of the garnishee himself. I should, consequently, think it just, on this occasion, to allow the claim of interest; but the majority of the Court will sanction a different decision.

Yeates, Justice.

I concur, generally, in the opinion expressed by the Chief Justice, that there is not sufficient ground to except the present case from the operation of the general rule.

Bradford, Justice.

As I was originally Counsel in this cause, I forbear taking any part in the decision.

By the Court: It is awarded, that the defendant be discharged, upon payment of the principal sum recovered, with costs.* Footnotes

[Footnote *] A writ of error was brought by the Plaintiff; and on the 18th of July 1793, the High Court of Errors and Appeals delivered the following judgment.

By the Court: After making consideration and due deliberation, it is considered by the Court here 1st. That the last judgment or decretal order of the Supreme Court 'That Andrew Caldwell shall be discharged from the said judgment on the payment of L 4016 9s. 4d to wit, the principal sum found due to Vance, Caldwell & Vance, by the second report of the referees, and all costs of suit,' be reversed. 2nd. That the judgment in the Supreme Court rendered in the Term of January 1791, in favor of George Fitzgerald, the plaintiff in Error, for the sum of L 5009 5s. 1d. with the costs of suit, and by agreement of the parties, stated, in the Record, made

absolute in January Term, 1792, be, and the same is hereby, according to the terms of the said agreement, affirmed and made stable.

The record was thereupon remitted to the Supreme Court.