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

Barriere Vs. Nairac

Barriere Vs. Nairac

SooperKanoon Citation : sooperkanoon.com/78124

Court : US Supreme Court

Decided On : 1796

Appeal No. : 2 U.S. 249

Appellant : Barriere

Respondent : Nairac

Judgement :

BARRIERE v. NAIRAC - 2 U.S. 249 (1796)
U.S. Supreme Court BARRIERE v. NAIRAC, 2 U.S. 249 (1796)

2 U.S. 249 (Dall.)

Barriere
v.
Nairac

Supreme Court of Pennsylvania

September Term, 1796

This was an action upon a Promissory Note, brought by the plaintiff, claiming to be indorsee of one Vuyton, against the defendant, the drawer of the note; in which the following declaration was filed.

'Philadelphia County ss.

Peter Nairac, late of the County aforesaid, yeoman, was attached to answer Peter Barriere, indorsee of Vuyton, on a plea of trespass on the case, &c.; And, whereupon, the said Peter Barriere, by Peter Stephen Du Ponceau, his attorney, complains, That whereas the said Peter Nairae, on the 8th day of June, in the year of our Lord one thousand seven hundred and ninety two, at Cape Francois, to wit, at the County aforesaid, made his certain note in writing, commonly called a Promissory Note, with his own proper hand subscribed, bearing date the same day and year last aforesaid, in and by which said note, he, the said Peter Nairac, promised to pay to a certain Vuyton, the sum of five thousand five hundred and ninety-three livres, fifteen sols and eight derniers, money of the French colony of St. Domingo, equal to six hundred and seven dollars and four cents, [249-Continued.]

lawful money of the United States, whenever he, the said Peter Nairac, should be thereunto required, for value received, by the said Peter Nairac, of the said Vuyton, in acquittance and for balance of account with the succession of Fissont, and being so indebted, he the said Peter Nairac, afterwards, to wit, the day and year last aforesaid, at Cape Francois, to wit, at the county aforesaid, in consideration thereof, upon himself assumed and then and there to the said Vuyton faithfully promised, that he would well and truly pay to him the said sum of five thousand five hundred and ninety-three livres, fifteen sols, eight derniers, of the value of six hundred and seven dollars and four cents, whenever afterwards he should be by him thereunto required. And the said Peter Barriere in fact faith, that the said Vuyton afterwards, to wit, the day and year last aforesaid, at Cape Francois, to wit, at the county aforesaid, did require the said Peter Nairac to pay to him the said sum of five thousand five hundred and ninety- three livres, fifteen sols, eight derniers, being the contents of the said Promissory Note; and afterwards, to wit, on the 3rd day of May, in the year of our Lord one thousand seven hundred and ninety four, at Baltimore, to wit, at the county aforesaid, the said Vuyton being unpaid and unsatisfied of the contents of the said note, by endorsement under his hand on the said note, appointed the contents thereof to

be paid to the said Peter Barriere, or to his order, for value received, whereof the said Peter Nairac then and there had notice, and the said Peter Nairac afterwards, to wit, the day and year last aforesaid, in

consideration of the said indorsement, upon himself assumed and then and there to the said Peter Barriere faithfully promised that he would well and truly pay to him the contents of the said note, whenever afterwards he should be by him thereunto required.'

Judgment had been obtained for want of a plea; a writ of inquiry of damages had been thereupon issued and returned; and now M. Levy made a motion in arrest of judgment on this ground,* that the declaration sets forth a Promissory Note payable to Vuyton alone, and not to order; and, therefore, there is no authority for the plaintiff to bring the action in his own name, as indorsee. H. Bl. 605. 2 Ld. Ray. 1397. Bailey on Bills of Exchange 1. 1 Penn. Laws (Dall. Edit.) p. 107.

Du Ponceau, admitted the general principle of the objection; but contended, that it was too late to make it, after the return of a writ of inquiry, which must be regarded in the light of a general verdict. If it does not appear to be a note to order, neither does the contrary appear; and, after a general verdict, the presumption will be in favor of the plaintiff's right to sue. In 1 Dall. Rep. 194, the case was founded on a special verdict, the defendant not daring to trust it to a general verdict; and in Doug. 683, the judgment was arrested because there was no allegation of notice of the protest, which could not be presumed from any fact stated in the declaration. Where, indeed, a title appears defective on the face of the record, a verdict will be set aside; but not where the title is merely defectively set forth. 4 Burr. 2020. If a fact must have been proved on the trial, it will be presumed after a general verdict, even though it be matter of substance. Cowp. 825. Here a sufficient title is proved, because the plaintiff sues as indorsee eo nomine, and after stating the note and indorsement, the defendant became liable; and as the statute, which makes a defendant liable, in an action by the indorsee, expressly and exclusively refers to notes made payable to order or assigns, the plaintiff

must, of course, have proved every thing on the trial that the statute requires to entitle him to an action to wit, that the note was an indorsable note. The objection, therefore, is founded on a mere omission, which is aided by a general verdict.

M. Levy, in reply: The plaintiff must bring himself within the act of Pennsylvania, by something appearing on the record: it is neither by the operation of the statute of Ann. c., nor by the custom of merchants, that he is entitled to institute an

action here in his own name. The act, then, only enables an indorsee to sue, where the note was originally made payable to order or assigns: That it should be so payable, is the very essence of the plaintiff's title; and he cannot recover unless it is alledged in the pleadings, as well as proved on the trial. There is a material difference between verdicts and inquests, not only in the solemnity and publicity of the proceedings, but in the requisites to form a decision. The interlocutory judgment compels an inquest to find some damages; and, therefore, it is not necessary to prove a note before the inquest, as it is before a jury; nor is it indispensable to produce in the former, as it would be in the latter, case, an indorsable note. The affirmance of the judgment, on the return to a writ of inquiry, is in legal contemplation the act of the court; but it is done, ex parte, at the instance of the plaintiff; and it cannot amount to more than an affirmance of the cause of action, as it is stated on the record. But even regarding the verdict, on a writ of inquiry, in the light of a general verdict, it is not necessarily to be presumed, that the Note was made payable to order, or assigns; nor that the fact was so proved. The probata may be supposed to be coextensive with the allegata, but not more; and there is an obvious distinction between a fact, which constitutes the plaintiff's only legal title to the action, and a fact (as in the cases cited from Burr. 2020. Cowp. 825.) which merely localizes the suit. If the essence of the plaintiff's title is omitted, nothing can be presumed in support of a verdict: No proof at the trial can make good a declaration, which contains no ground of action on the face of it. Douglas 683. Tidd's Pr. 614.

M'Kean, Chief Justice:

It occurred, at once to the Court, that, if the objection was not made too late, it must prevail. There is nothing, however, on the record to shew, that the parties were both fully heard upon executing the writ of inquiry; and, after an interlocutory judgment, the inquest were bound to give some damages. There is, likewise, in the nature of the subject, in reason, and in law, a material difference between a verdict, which is obtained upon a public trial in open Court, where counsel are employed to investigate the merits, and Judges to superintend the decision, of the cause, and a verdict, which is obtained on a writ of enquiry, issued ex parte, and executed without such important aids to enlighten and direct the judgment of the inquest. In the present instance, in may be remarked, that great injustice might be done to the defendant; for, if the note should, by any means, get again into Vuyton's hands, and he should sue upon it, could a judgment in favor of the present plaintiff be pleaded in bar to that action?

Page 2 U.S. 249, 252

It is general rule, that any exception which may be taken advantage of on a writ of Error, may, also, be taken advantage of, on a motion in arrest of judgment. By the declaration, it appears, that the party had not a cause of action; since the promissory note is there stated to have been made payable to Vuyton only, and not to his order. For this defect of title (which will be apparent from the record whenever, and wherever, it may be examined) there is no doubt the judgment would be reversed on a removal into the High Court of Errors and Appeals: And, if it would be sufficient ground to reverse, I repeat, that it is a sufficient ground to arrest, the judgment.

Judgment arrested. Footnotes

[Footnote *] There was another ground mentioned, to wit, that the original parties to the note were both French citizens, and the plaintiff merely a collusive indorsee, so that the French Consul, and not the State Courts, had jurisdiction of the cause: But this point was not at all argued.

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