Peterson Vs. Willing

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Court : US Supreme Court

Decided On : 1799

Appeal No. : 3 U.S. 506

Appellant : Peterson

Respondent : Willing

Judgement :

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3 U.S. (3 Dall.) 506

SUPREME COURT

OF PENNSYLVANIA

This was an action for money had and received to the Plaintiff's use founded on the following facts:

On 17 December, 1796, Levinus Clarkson executed a mortgage

to Samuel Clarkson on certain stores and lots of ground in Philadelphia to secure the payment of $8,000, with interest. Before the execution of the mortgage, Samuel Clarkson had advanced or secured a considerable sum of money to accommodate Levinus Clarkson (who was in very embarrassed circumstances), and had taken a bill of sale of a ship, &c.;, as an indemnity, which however he thought was insufficient for the purpose, and had repeatedly pressed for an additional security. About this time, Levinus Clarkson, being indebted by note to the Plaintiff and having deposited a considerable amount of Morris and Nicholson's notes, by way of collateral security, proposed to the plaintiff to release the deposit, and accept in lieu of it, a note endorsed by Samuel Clarkson, who was then in good credit. The plaintiff acceded to the proposition, and Levinus Clarkson, in order to induce Samuel Clarkson to endorse the note, promised to execute the mortgage above mentioned, not only as a security in this transaction, but as an auxiliary to the fund for indemnifying Samuel Clarkson on account of his previous advances and engagements. Accordingly, on 13 December, 1796, the note drawn by Levinus Clarkson and endorsed by Samuel Clarkson was delivered to the plaintiff, the notes of Morris and Nicholson were restored to Levinus Clarkson, and the mortgage was executed a few days afterwards. Both the Clarksons failed before the debt due to the plaintiff was paid. Levinus Clarkson was discharged under the insolvent laws, and Samuel Clarkson assigned his property in trust for the benefit of all his creditors to the defendants, who, by virtue of the assignment, has received a considerable sum arising from the sale of the mortgaged premises, which had been enforced by a creditor having a previous lien.

The plaintiff claimed so much of the money thus received by the defendants as would be sufficient to satisfy his debt, and his counsel offered Levinus Clarkson as a witness to prove that the mortgage, although expressed in absolute terms to be for the use of Samuel Clarkson himself, was in fact given in consideration of the endorsement of the note delivered to the plaintiff and on a positive promise that the note should be paid out of the proceeds of the mortgaged premises, the surplus only being destined to exonerate Samuel Clarkson from his other engagements for Levinus Clarkson. Hence it was intended to argue that an implied trust was created for the benefit of the plaintiff to the amount of his debt.

The defendant's counsel objected to the competency of the proposed witness on these grounds 1st, that parol testimony cannot be admitted to contradict, alter, modify, or explain, a solemn instrument under seal; 2d, that if parol testimony

were at all admissible, Levinus Clarkson was not competent to give it, because its effect would be to invalidate an instrument to which he himself had given sanction, and though the evidence might not totally destroy the deed, it would communicate a new direction and operation to it, equally within the mischief which the rule of the law was ended to guard against, 1 T. Rep. 296; 3d, that Levinus Clarkson was excluded by his interest in the event of the cause, for the tendency of his evidence would be to enable the plaintiff to recover out of the fund in the hands of the defendants, and so discharge the witness from the responsibility on his note of hand.

But, by the Court:

It cannot be agreeable to be called on thus suddenly to give a judicial opinion on an important question, and therefore in the present as well as in every other case, we shall be ready to listen to any motion which will introduce a reconsideration and revision of the decisions pronounced in the course of a trial.

The objections, however, do not appear to be sufficiently cogent to exclude the witness. The evidence will not contradict the deed, though it may enable the jury to apply the property to the uses originally intended by the parties. Nor is the evidence calculated to invalidate the deed, but to support and direct it to the purposes for which it was given. As to the interest of the witness, it does not seem to be affected by the event of this cause. And the laudable liberality of courts of justice in modern times, has set us the example for referring all such objections of doubtful and distant interests to the credit rather than to the competency of the party.

The objections are therefore overruled.

On examining the witnesses it appeared that at the time the mortgage was promised and executed and for some time afterwards, the plaintiff did not know of the transaction; that he surrendered Morris and Nicholson's notes in consideration of Samuel Clarkson's endorsement, without reference to any other security; and that the amount due from Levinus Clarkson to Samuel Clarkson exceeded the proceeds of all the securities placed in the hands of the latter. In a written statement made by Samuel Clarkson at the time, however, he had set forth the engagements for which the mortgage and other securities had been given, inserting among the rest the note held by the plaintiff; but this seemed merely to be descriptive

of the engagements against which Samuel Clarkson was to be indemnified, and not an appropriation of the securities as a fund for paying the persons to whom he was bound.

The Court expressed a decided opinion that under such circumstances, there was no express trust, nor any ground for an implied trust, in favor of the plaintiff. He had made his bargain simply on the credit of Samuel Clarkson's endorsement, without contemplating any other security. The mortgage was taken by Samuel Clarkson for his own indemnification. The transactions were therefore substantive and unconnected. And no trust being declared or contemplated at the time, a court of law cannot, on the suggestions of humanity, undertake to create one in opposition to other legal and meritorious claims.

The plaintiff suffered a nonsuit.