Clark Vs. Robert Young and Co.

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Court : US Supreme Court

Decided On : 1803

Appeal No. : 5 U.S. 181

Appellant : Clark

Respondent : Robert Young and Co.

Judgement :

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Clark v. Robert Young & Company

5 U.S. (1 Cranch) 181

ERROR TO THE CIRCUIT COURT FOR THE

DISTRICT OF COLUMBIA AT ALEXANDRIA

SYLLABUS

Action for goods sold and delivered in Virginia. The defendants in error had sold to the plaintiff a quantity of salt, and afterwards received from him a promissory note

payable at a future day, which was endorsed by the vendee of the goods, the plaintiff in error. The note being protested, suit was instituted against the vendee as endorser of the note, and a judgment was obtained in his favor on the ground that, by the law of Virginia, an action could not be maintained against the endorser of a promissory note until after judgment had been obtained against the drawer and proof of his insolvency. This suit was brought on the original contract.

Held that this action on the original contract could be maintained against the vendee of the goods, and that the judgment in the suit on the note against the vendors was not a bar to the same.

That although the endorser of the note, the plaintiff in error, is entitled to the benefit of the note, yet as it was not an extinguishment of the original debt, there was no absolute necessity to prove an offer of the note before the institution of the suit against him as vendee of the goods.

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

This was a suit brought by the defendants in error against the plaintiff in the Circuit Court of the District of Columbia sitting in the County of Alexandria, and the declaration contains two counts for goods, wares, and merchandise sold and delivered and one for money had and received to their use. The cause came on to be tried on the general issue, and a verdict was found for the plaintiffs below on which the court rendered judgment.

At the trial of the cause it appeared that the suit was brought for a quantity of salt sold and delivered by Robert Young & Co. to Clark, after which Clark endorsed to Robert Young & Co. a promissory note made by Mark Edgar to John Pickersgill & Co. which had been endorsed by them to the said Clark, and which was payable sixty days after date.

This note was protested for nonpayment, after which a suit was brought thereon by Robert Young & Co. in the County Court of Fairfax against Clark, and the

declaration contained two counts, one on the endorsement and the other for money had and received to the use of the plaintiffs. In this suit verdict and judgment were given for the defendant Clark, the Court of Fairfax being of opinion that a suit could not be maintained against the endorser

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of the note until a judgment had been first obtained against the drawer and his insolvency made to appear.

After the determination of that action, this suit was instituted on the original contract, and at the trial the counsel for the defendant moved the court to instruct the jury that if from the evidence given in the cause it should be of opinion that the promissory note aforesaid was endorsed by the defendant to the plaintiffs in consequence of the goods, wares, and merchandise sold as aforesaid, although the said endorsement was not intended as an absolute payment for the said goods, wares, and merchandise or received as such by the plaintiffs, but merely as a conditional payment thereof, yet the receipt of the said note under such circumstances and the institution of the aforesaid suit by the said plaintiffs against the said defendant on his endorsement aforesaid made the said note so far a payment to the said plaintiffs for the said goods, wares, and merchandise as to preclude them from sustaining any action against the said defendant for the said goods, wares and merchandise until they had taken such measures against the said Mark Edgar as were required by the laws of Virginia, and that the plaintiffs, having instituted the suit aforesaid upon the said note against the said defendant, and that having been decided against the said plaintiffs, they were barred from sustaining this action against the said defendant.

This instruction the court refused to give, but directed the jury that if it was of opinion from the evidence that the salt was sold and delivered as alleged and that the promissory note aforesaid was endorsed by the defendant to the plaintiffs in consequence of the salt sold as aforesaid, although the said endorsement was not intended as an absolute payment for the said salt or received as such by the plaintiffs, but merely as a conditional payment thereof, the same is a discharge to

the defendant for the salt sold to him unless it is proved that due diligence has been used to receive the money due on the note, but that the bringing suit on the said note against Mark Edgar was not essentially necessary to constitute the said diligence, and that the said diligence may be proved by other circumstances, and their omitting to bring the said suit against Edgar may be accounted for by the insolvency of Edgar,

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if proved, or any conduct of the defendant which may have prevented the bringing of the said suit.

To this opinion the counsel for the defendant excepted, and then prayed the court to direct the jury that the defendant was entitled to a credit for the amount of the said note unless the plaintiffs could show that they had instituted a suit thereon against Edgar or that Edgar had taken the oath of insolvency or absconded at the time the note became payable, or unless the plaintiffs could show that they had offered to return and reassign the said note to the said defendant previous to the institution of this suit.

This direction the court refused to give, and referred the jury to its opinion already given on the principal points now stated, and to which an exception had already been taken. This opinion was also excepted to. A verdict and judgment were then rendered for the plaintiff without giving credit for Edgar's note, which judgment is now brought into this Court by writ of error.

On these exceptions it has been argued that the court has erred because

1. The conduct of the plaintiff, Young & Co., has disabled it from maintaining this action, and such ought to have been the direction to the jury.

2. The verdict and judgment in Fairfax Court are a bar to this action.

The conduct of the plaintiffs was entirely before the jury, to be judged of by it from the evidence, excepting only that part of it respecting which the court gave an opinion. We are therefore only to inquire whether the opinion given by the court be

erroneous.

It is agreed on both sides that the note in this case was not received as payment of the debt, and consequently did not extinguish the original contract. It was received as a conditional payment only, and the opinion of the court was that in such a case the want of due diligence to receive the money due thereon would discharge the defendant. But the court proceeded to state that due

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diligence might be proved although no suit was instituted, and that circumstances, such as the known insolvency of Edgar, the drawer of the note, or any conduct of Clark preventing a suit would excuse Young & Co. for not having instituted one.

This opinion of the court seems perfectly correct. The condition annexed to the receipt of the note cannot be presumed to have required that a suit should be brought against a known insolvent or that it should be brought against the will of the endorser; if he chose to dispense with it or took means to prevent it, nothing can be more unreasonable than that he should be at liberty to avail himself of a circumstance occasioned by his own conduct.

It is not intended to say that the person receiving such a note is compellable, without special agreement, to sue upon it in any state of things. It is not designed to say that he may not, on its being protested, return it to the endorser and resort to his original cause of action; it is only designed to say that under the circumstances of this case, nothing can be more clear than that there was no obligation to sue.

The court gave no opinion that the suit in Fairfax was or was not a bar to that brought in the County of Alexandria.

It is, however, clear that no such bar was created.

To waive the question whether in such a case as this, with declarations for such distinct causes, a verdict in a prior suit may be given in evidence as a bar to another suit really for the same cause of action, it is perfectly clear that in this case

the same question was not tried in both causes.

In Fairfax, the point decided was that the suit against the endorser would not lie until a suit had been brought against the drawer; in the suit in Alexandria, the point to be decided was whether the plaintiffs had lost their remedy on the original contract by their conduct respecting the note. These were distinct points, and the merits of

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the latter case were not involved in the decision of the former.

On the second bill of exceptions, the only really new point made is whether the action is maintainable unless Robert Young & Co. had offered to return and reassign the note before the institution of the suit.

Unquestionably Clark is entitled to the benefit of the note, but as it was no extinguishment of the original cause of action, there was no absolute necessity to prove an offer of the note before the institution of the suit. Indeed it does not appear in this bill of exceptions whether the note was merely a collateral security or a conditional payment. This is nowhere stated positively. In the first opinion of the court it is stated hypothetically, and that opinion must be considered on the presumption that such was the fact. But no such presumption is raised respecting the second bill.

Judgment affirmed with costs.