Walker Vs. Smith

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Court : US Supreme Court

Decided On : 1804

Appeal No. : 4 U.S. 389

Appellant : Walker

Respondent : Smith

Judgement :

WALKER v. SMITH - 4 U.S. 389 (1804)
U.S. Supreme Court WALKER v. SMITH, 4 U.S. 389 (1804)

4 U.S. 389 (Dall.)

Walker et al.
v.
Smith.

Circuit Court, Pennsylvania District.

October Term, 1804

CASE. On the trial of this cause, the following facts appeared: The plaintiffs were merchants of London; and in March 1796, shipped and consigned to the defendant certain goods, invoiced at 270l. 14s. 8d. sterling, accompanied with a letter, stating that 'these goods were shipped by order of Mr. J. B. and for his account; and he

was to remit us the amount on his arrival at Philadelphia: but since they were shipped, some circumstances have occurred, which have created some doubts, in our minds, respecting his solidity; and by the advice of our friends, we have adopted this method to secure ourselves through your friendly assistance, which we request on this occasion. As we do not want to deprive B. of the benefits to be derived from the sale of these goods, we wish you to hold them at his disposal, but not to deliver them to him, without being paid for the amount, or having such security given you therefor, as is satisfactory to yourself. Should he not be able to effect either of these, in a reasonable time, we would wish you to dispose of them for our account, and remit us the amount in good bills.' The defendant duly received the goods, but delivered them over to B. without receiving payment, or exacting security; and shortly afterwards B. failed. The defendant, however, representing other creditors of B., as well as the plaintiffs, made a composition, by which he received for the proportion of the plaintiffs 151l. 16s. sterling, and remitted that sum to them, without charging commissions, in a letter dated the 11th of December 1800. The plaintiffs refused to ratify the composition, and brought the present suit to recover the invoice value of the goods, with interest according to the usage of trade.

On the trial, Ingersoll assumed three grounds of defence: 1st. That there was no cause of action; as the defendant had accepted the consignment, on principles of mere curtesy, without interest directly, or indirectly; and had exercised a fair and impartial

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discretion, for the equal interest of all the creditors of B. 2d. That even if the action could be maintained, it is a case, in which the jury are at liberty to give less by way of damages, than the amount of the loss actually proved. 1 Dall. Rep. 180. 2 Wils. 328. 2 Bac. Abr. 266. Bull. N. P. 159. 1 Esp. N. P. 179. 3d. That the defendant, acting as a general consignee, may be considered as selling the goods to B., and, consequently, is not liable to his principal, for more than he actually received. Willes Rep. 407.

For the plaintiffs, J. Sergeant and Dallas contended, 1st. That although the defendant was not obliged to accept the consignment, yet, if he did accept it, he was answerable, like every other agent, or factor, for a breach of the positive orders of his principal. 1 Beawes L. M. 44. 46. Moll. 493. 497. 4 Com. Dig. 227, 8. 2 Cha. Cases, 57. 4 Rob. 218. 1 Marsh. 206, 7. 209, 210. 2d. That although the jury had a great and useful latitude in cases of tort, and mixed cases of negligence and tort, where no precise standard of damages was established; the legal discretion of a jury, could indulge in no capricious, or conjectural, estimate, in cases of contract, express, or implied, where a mere calculation of figures furnishes a certain and uniform standard of right. 2 Bl. Rep. 942. 4 T. Rep. 654, 5. 5 T. Rep. 255. Barnes, 455. 448. 1 Stra. 425. 3d. That on these principles the defendant was liable for the debt, as if he were a purchasor of the goods; and every purchasor is chargeable with interest, after the usual term of credit is expired. 1 Dall. Rep. 265. Doug. 361. 2 Bos. & Pull. 337. Crawford v. Willing, ant.

THE COURT.

The COURT, in their charge to the jury, expressly declared an opinion, that, on the evidence, the plaintiffs were entitled to recover the full amount of the original debt, with such reasonable compensation for the delay of payment, as the jury should think proper.

The jury, however, gave a verdict for only 468 dollars 44 cents, which was the amount of the plaintiffs' demand (after crediting the remittance) estimating the sterling money at par, allowing the defendant a commission, and deducting the interest. The jury added, that the plaintiffs should pay the costs. [Footnote 1]

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The plaintiffs' counsel then moved for a new trial, because the verdict was against law, evidence, and the charge of the Court: but, after argument, the motion was over-ruled; and it was observed by WASHINGTON, Justice, that although he was not satisfied with the verdict, nor should he have assented to it as a juror; yet, the question of damages, or of interest in the nature of damages, belonged so

peculiarly to the jury, that he could not allow himself to invade their province; while he felt a determination to prevent, on their part, any invasion of the judicial province of the Court. Footnotes

Footnote 1 The finding of the jury, that the plaintiffs should pay the costs, was, at once, abandoned by the defendant's counsel, on general principles; but Ingersoll stated, that the first judicial law provided, that the plaintiff should not be allowed costs, if he recovered a sum less than 500 dollars; 6 vol. 16. s. 3, 1 vol. 61. s. 20. and that although the action was instituted, when the sum required, in that respect, was only 400 dollars; yet, he referred to a decision of Judge CHASE's, in the Circuit Court of Delaware, which pronounced, that the act repealing the latter provision, revived the former, and was to be applied to all suits present, or future. Dallas referred, however, to the acts of congress: 5 vol. 23.s. 11. 6 vol. 16. s. 4. And the COURT declared that the plaintiffs were clearly entitled to costs.