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

Dunlop and Co. Vs. Ball

Dunlop and Co. Vs. Ball

SooperKanoon Citation : sooperkanoon.com/78321

Court : US Supreme Court

Decided On : 1804

Appeal No. : 6 U.S. 180

Appellant : Dunlop and Co.

Respondent : Ball

Judgement :

Dunlop & Co. v. Ball - 6 U.S. 180 (1804)
U.S. Supreme Court Dunlop & Co. v. Ball, 6 U.S. 2 Cranch 180 180 (1804)

Dunlop & Co. v. Ball

6 U.S. (2 Cranch) 180

ERROR TO THE CIRCUIT COURT

OF THE COUNTY OF ALEXANDRIA

SYLLABUS

To authorize presumption of payment of a bond, twenty years must have elapsed, exclusive of the period of the disability of the holder to sue for the same.

The principle upon which the presumption of payment arises from the lapse of time is a reasonable principle, and may be rebutted by any facts which destroy the reason of the rule.

There is no presumption of payment of a bond held by an alien enemy during a war. But it is not so clear that upon a bond dated in 1773, and on which suit was not brought until 1802, the same length of time after the removal of the disability is necessary to raise the presumption of payment, as would be required if the bond had borne date at the time of such removal.

The plaintiffs in error instituted a suit in 1802 in the circuit court upon a bond executed in 1773 by the defendant, a citizen of Virginia, to them, they being British merchants residing in Great Britain. The bond was given for a debt created in Virginia at the time of its date. It was admitted that the plaintiffs had an agent authorized to collect their debts, so far as the plaintiffs could authorize the same to be collected, during the whole time, from the date of the bond to the time of the suit, which agent resided in the county in which the defendant lived. Open war existed between Great Britain and Virginia from 19 April, 1775, until September, 1783. William Wilson, the agent of the plaintiffs, delivered over the bond to William Hunter, Jr., in 1776, to be collected, at which time he (William Wilson) went to Europe. And when he returned in 1784 he received back the bond from William Hunter. Sometime after the year 1789, he delivered the said bond to James Johnson for collection, who returned it, and neither of those persons stated that the money, or any part was collected; that Johnson died in 1797.

In December, 1774, the expiration of the fee bill caused the courts of justice of Virginia to be shut against all persons, and the impediment continued until the commencement of the war on 19 April, 1775.

Until the act of 1793, from the obstacles interposed by juries, and the proceedings of some of the courts of Virginia, a general opinion prevailed among the inhabitants of the State of Virginia, and among juries, that a British debt could not be recovered.

The facts of the case were presented by a bill of exceptions to the charge of the circuit court to the jury on the trial of the cause, when the counsel for the defendant prayed the court to instruct the jury, that from the length of time they ought to presume payment of the bond. Upon which the court instructed the jury that from the

Page 6 U. S. 181

length of time stated in the facts agreed on, the bond, in law, is presumed satisfied, unless they should find from the evidence that interest was paid on the bond within twenty years from 5 September, 1775 (the time of the last payment), or that a suit or demand was made on the said bond within twenty years from the last mentioned time, exclusive (in both cases) of five years, five months and twenty days, taken out of the act of limitations.

To which opinion the plaintiffs excepted and prosecuted this writ of error.

In October, 1777, the Assembly of Virginia passed an act sequestering

Page 6 U. S. 182

British property, and suspending executions until further order of the legislature, in all cases where a British subject was plaintiff, and a citizen of the commonwealth defendant.

In November, 1781, a law was passed suspending executions in certain cases; in May and October, 1782, acts of a similar character were enacted, and on 5 December, 1783, an act was passed to revive and continue in force the several acts of assembly for suspending the issuing of executions in certain judgments until December, 1783, which act expired in July, 1784.

Page 6 U. S. 184

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

The only circumstance which could create a question in this case is that twenty years had not elapsed, exclusive of the period during which the plaintiffs were under a legal disability to recover, before the action was brought.

The principle upon which the presumption of payment arises from the lapse of time is a reasonable principle, and may be rebutted by any facts which destroy the reason of the rule.

That no presumption could arise during a state of war, in which the plaintiff was an alien enemy, is too clear to admit of doubt. But it is not so clear that upon a bond so old as this, the same length of time after the removal of the disability is necessary to raise the presumption as would be required if the bond had borne date at the time of such removal.

It appears from the decisions of the courts of Virginia, from the pleas in bar in the federal courts, and particularly from the observations of the chancellor of Virginia in the case cited, that it was the general understanding of the inhabitants of that state that British debts could not be recovered, and until the year 1793 there was no decision of the superior courts that such debts were recoverable.

The only question is whether, in case of an old debt, the same time is required to raise the presumption as in the case of a debt accruing since the impediments have been removed.

In such a case it is not easy to establish a new rule, and

the Court thinks it best to adhere to the old decisions that twenty years must have elapsed exclusive of the period of the plaintiff's disability, and are of opinion that the circuit court erred in directing the jury that payment ought to be presumed.

The judgment of the court is entered upon the minutes in the following terms:

The Court, having heard the arguments of counsel and maturely considered the same, is of opinion (and doth adjudge, order, and decree accordingly) that the

circuit court erred in instructing the jury

"That from the length of time, it was to presume the bond in the record mentioned, to be satisfied unless they should find from the evidence that interest was paid on the bond within twenty years from 5 September, 1775 (the time of the last payment), or that a suit or demand was made on said bond within twenty years from the last mentioned time, exclusive, in both cases, of five years, five months, and twenty days, taken out of the act of limitations,"

there being circumstances in this case which oppose the presumption which would have arisen from the length of time which has elapsed since the date of the bond.

And this Court doth further adjudge, order, and decree that this cause be remanded to the said circuit court, to be there tried, with directions that there is no presumption of payment of the said bond, as directed by the said circuit court.

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