

Hodgson Vs. Butts

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Court : US Supreme Court

Decided On : 1805

Appeal No. : 7 U.S. 140

Appellant : Hodgson

Respondent : Butts

Judgement :

Hodgson v. Butts - 7 U.S. 140 (1805)

U.S. Supreme Court Hodgson v. Butts, 7 U.S. 3 Cranch 140 140 (1805)

Hodgson v. Butts

7 U.S. (3 Cranch) 140

ERROR TO THE CIRCUIT COURT FOR THE

DISTRICT OF COLUMBIA AT ALEXANDRIA

SYLLABUS

A mortgage of chattels in Virginia is void as to creditors and subsequent purchasers unless it be acknowledged, or proved by the oaths of three witnesses and recorded in the same manner as conveyances of land are required to be

acknowledged or proved and recorded.

Error to the circuit court for the District of Columbia sitting at Alexandria in an action for money had and received to recover from the defendant, who was master of the schooner *Mississippi*, the amount of freight received by him subsequent to the mortgage of the said schooner by R. & J. Hamilton (the former owners) to the plaintiff.

On the trial of the general issue, the plaintiff took two bills of exception, and the verdict was for the defendant.

The first bill of exceptions stated the following facts:

That the plaintiff, to support his claim, produced a deed from R. & J. Hamilton, by which they bargained and sold to the plaintiff the schooner *Mississippi*, then in the port of Alexandria, and the cargo of the ship *Hannah*, then at sea, as security to indemnify and save harmless the plaintiff, as endorser of their notes, to the amount of \$10,000. If they should indemnify him within ___ days after the arrival of the cargo of the ship *Hannah*, if it should arrive before the return of the schooner *Mississippi* from her then intended voyage to New Orleans, or if the cargo of the *Hannah* should not arrive before the return of the schooner, then within ___ days after her return, then the deed should be void, but if they should fail to indemnify the plaintiff within the periods mentioned, then he was to sell the cargo of the *Hannah*, and the schooner and cargo. The deed also contained the following covenant:

"And we do moreover bind ourselves, our executors and administrators, and also the freight and inward cargo of the said schooner *Mississippi* to exonerate the said William Hodgson from . . . , it being the true intent and meaning of these presents, to bind ourselves, our schooner, called the *Mississippi*, her tackle,

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apparel and furniture, her freight and inward cargo, and the cargo of the ship *Hannah* to exonerate. . . ."

The execution of the deed was in the following form:

"In witness whereof the said Robert and James Hamilton have hereunto set their hands and affixed their seals, this 4 May, 1800."

"ROBT. & JAS. HAMILTON"

"Signed, sealed and delivered, in the presence of"

"CH. SIMMS"

"JAMES D. LOWRY"

"At a Court of Hustings held for the Town of Alexandria 6 October, 1800, this bill of sale from Robert and James Hamilton to William Hodgson was proved to be the act and deed of the said Robert Hamilton for self and for James Hamilton by the oaths of Charles Simms and James D. Lowry, witnesses thereto, and ordered to be recorded."

"G. DENEALE, Clerk"

The plaintiff also produced in evidence the register of the schooner, with an endorsement thereon in these words:

"At the request of the within named Robert and James Hamilton and William Hodgson, merchants, of the Town of Alexandria, I hereby certify that the within mentioned vessel is mortgaged by the said Robert and James Hamilton to the said William Hodgson to secure the payment of the sum of \$10,000, as witness my hand, this 13 May, 1800."

"CHAS. PAGE, Dy. Collr."

It was proved that the said register, with the endorsement thereon as aforesaid, was delivered to the defendant previous to the sailing of the said schooner. That

she sailed from Alexandria to New Orleans about 14 May, 1800, from New Orleans to Jamaica, and from Jamaica she arrived at Alexandria about 27 November, 1800, at which time, and not before, she was put into the actual possession of the plaintiff under a new and absolute bill of sale executed by Robert and James Hamilton to the plaintiff at that time. That the defendant received the freight of the cargo, carried from New Orleans, at Jamaica. No evidence was adduced to show that the plaintiff had ever given notice to the defendant that he should look to him for the freight (other than the endorsement on the register).

On the part of the defendant evidence was adduced, to prove that R. & J. Hamilton, on 12 May, 1800, were indebted to a certain John Haynes in the sum of \$384 for wages as a seaman previously earned, \$184 of which were earned on board the said schooner and \$200 on board another of their vessels. That, being so indebted, R. Hamilton, on 13 May, 1800, gave the said Haynes an order on his brother James, then in New Orleans, stating a balance of \$384 to be due to him with some interest and requesting his brother to pay it. That on the same day they were indebted to the defendant in the sum of \$800 for wages due him as master of and disbursements on account of the schooner on a previous voyage, which sum R. Hamilton requested his brother James, at New Orleans, to pay, by letter of that date. That the defendant received his sailing orders and instructions from R. Hamilton in the name of R. & J. Hamilton on 14 May, 1800, before he sailed from Alexandria. That the vessel was conducted entirely under the directions of R. & J. Hamilton from the date of the mortgage on 4 May, 1800, until 27 November, 1800, when she was delivered to the plaintiff.

That on the voyage from Alexandria to New Orleans, the defendant met James Hamilton in the River *Mississippi* and showed him the orders in favor of the defendant and of John Haynes and requested payment. That James Hamilton replied that he had no money to satisfy the said orders; that the defendant

must wait until the vessel earned enough to pay them, and desired the defendant to pay them out of the first money the vessel should earn by freight or otherwise. That the vessel proceeded to New Orleans, and from thence with a cargo to Jamaica, where the freight was received, and out of the same the defendant paid Haynes the \$384 and applied \$800 to the discharge of his own claim. That the vessel then sailed from Jamaica and arrived at Alexandria on 27 November, 1800. That after her arrival and after possession delivered to the plaintiff, the latter paid the expenses and disbursements of the voyage, which became due on her arrival, by the orders of the defendant. The plaintiff also insured the vessel for the said voyage and paid the premium thereon after her departure for New Orleans. It was also proved that on the defendant's return to Alexandria with the vessel, and before the plaintiff took possession of her and received his absolute bill of sale as aforesaid, the defendant rendered to and settled with R. & J. Hamilton an account current of the expenses and profits on the said voyage in which they gave credit for the order in favor of himself and that in favor of Haynes.

Upon this statement of the evidence, the plaintiff prayed the court to instruct the jury that he was entitled to recover of the defendant the sum of \$1,184 thus admitted to have been received for freight and applied to the discharge of the two orders, which the court refused to do, and directed the jury to find a verdict for the defendant if it found the facts to be as stated.

The 2d bill of exceptions stated that the plaintiff prayed the court to instruct the jury that if it should be of opinion from the evidence aforesaid that the defendant received information of the mortgage from Robert Hamilton before the schooner sailed upon the said voyage, the plaintiff was entitled to recover the said \$1,184, which the court also refused to do and directed the jury, as before, that their verdict ought to be for the defendant.

This case was first argued at February term, 1804.

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

This suit was instituted to recover the freight of a vessel of which the plaintiff was a mortgagee. Upon inspecting the deed, which is the foundation of the action, it appears to have been admitted to record on the oath of only two subscribing witnesses. This suggested the preliminary question whether a deed of mortgage so recorded was not absolutely void as to creditors and subsequent purchasers? This question depends on the construction of two acts of the Legislature of Virginia. The first is entitled, "An act for regulating conveyances." The 4th section of that act is in these words:

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"All bargains, sales," &c.; The first member of the sentence relates to lands only, the second to marriage settlement wherein either lands or personal estate should be settled, and the third relates to deeds of trust and mortgages. Terms descriptive of personal estate are omitted, but the word "whatsoever" would certainly comprehend a mortgage of a personal chattel, as well as of lands, if not restrained by other words manifesting an intent to restrain them.

It is argued that this intent is clearly manifested. The whole act relates to real estate except that part of it which respects marriage settlements. Its title is "an act concerning conveyances," and all its provisions are adapted to the conveyance of lands except in the particular case of marriage settlements, and in that case the act provides expressly for recording a settlement of chattels. This act, it is said, contains no "directions" for recording a deed of trust or mortgage for a personal thing, and, consequently such deed cannot be within it.

The first section of the act respects conveyances of lands only, and directs that they shall be acknowledged or proved by the oath of three witnesses in the general court or court of the district, county, city, or corporation in which the lands lie.

The second respects marriage settlements, and directs that if lands be conveyed or covenanted to be conveyed, they shall be proved and recorded in the same manner as had been prescribed in the first section, but if only slaves, money, or

other personal thing be settled, the deed is to be proved and recorded before the court of the district, county, or corporation in which the party dwells, or as afterwards directed.

The third section relates only to the proving and recording of livery of seizin.

Then follows the fourth section, which requires, among other enumerated conveyances that "all deeds of trust and mortgages whatsoever" shall be void as to creditors and subsequent purchasers if not acknowledged or proved, and recorded "according to the directions

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of the act." There being no "directions" which are applied to mortgages unless lands be conveyed in them, it has been argued that such mortgages only as convey lands are comprehended within the act.

The act, it must be acknowledged, is very obscurely penned in this particular respect, and there is so much strength in the argument for confining it to mortgages of lands that if a mortgage of a personal chattel could be brought within the provisions of any other act, the Court would be disposed to adopt the construction contended for.

The plaintiff insists that such a mortgage is comprehended in the 2d section of the "act to prevent frauds and perjuries."

That act avoids fraudulent conveyances and declares that deeds of personal chattels not upon a valuable consideration where the possession remains with the donor, or a reservation of interest in the donor where possession passes to the donee shall be fraudulent and void unless proved and recorded according to the directions of the act. A mortgage made on a valuable consideration, would be very clearly excluded from the 2d section, although the act contained nothing further on the subject. But to remove the possibility of doubt, the 3d section declares that the act shall not extend to any conveyance made "upon good consideration and *bona fide*. "

The meaning of the word "good" in the statute of frauds is settled to be the same with "valuable."

It is therefore perfectly clear that the case is altogether omitted or is provided for in the act concerning conveyances. In a country where mortgages of a particular kind of personal property are frequent, it can scarcely be supposed that no provision would be made for so important and interesting a subject. The inconvenience resulting from the total want of such a provision would certainly be great, and the Court therefore ought not to suppose the case to be entirely omitted if there be any legislative act which may fairly be construed

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to comprehend it. The act concerning conveyances, although not penned with that clearness which is to be wished, does yet contain terms which are sufficient to embrace the case, and the best judicial opinions of that state concur in this exposition of it.

Although the point was not directly decided in the case of *Hill v. Claiborne*, the court of appeals appears to have proceeded on this construction; and Judge Tucker, in discussing this subject, avows the same opinion.

Upon a consideration of the acts on this subject, Butts being a creditor, it is the opinion of the court, that the deed of mortgage, in the proceedings mentioned, was void as to him.

The counsel for the plaintiff contends that although the mortgage deed be void, yet Hodgson is entitled to recover because he has paid money to the order of Butts under the mistaken opinion that he was entitled to the freight.

This allegation is not made out in point of fact. Hodgson was in possession of the vessel as the absolute purchaser before he paid for the disbursements he is now endeavoring to recover. It does not appear that he paid these disbursements in the confidence of receiving the freight or that he was not compellable to pay them as owner of the vessel. The freight had previously been applied by Butts, under the

authority of the Hamiltons, to the payment of a debt due to himself. He had a right as a general creditor to retain that freight as against the original owners or their assignee.

The Court is of opinion that the judgment of the circuit court is to be

Affirmed with costs.

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