

Harris Vs. Johnston

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Court : US Supreme Court

Decided On : 1806

Appeal No. : 7 U.S. 311

Appellant : Harris

Respondent : Johnston

Judgement :

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Harris v. Johnston

7 U.S. (3 Cranch) 311

ERROR TO THE CIRCUIT COURT OF THE

DISTRICT OF COLUMBIA AT ALEXANDRIA

SYLLABUS

An action cannot be maintained on an original contract for goods sold and delivered by a person who has received a note as conditional payment, and has passed away that note.

A bill of parcels delivered by I. stating the goods as bought of D. & I. is not conclusive evidence against I. that the goods were the joint property of D. & I., but the real circumstances may be explained by parol.

If part of the goods were the sole property of D. and the residue the sole property of I., and if I. had authority from D. to sell D.'s part, I. may maintain an action for whole, in his own name.

An endorsee of a promissory note payable to order cannot, in Virginia, maintain an action at law upon the note against a remote endorser, but he may in equity.

Error to the Circuit Court of the District of Columbia sitting at Alexandria in an action of assumpsit for goods sold and delivered and money had and received.

The defendant pleaded the general issue, and upon the trial took two bills of exceptions.

The first stated that this action was commenced on 10 July, 1801, and that on the trial, the plaintiff offered evidence of the sale and delivery of goods, to the amount of \$2,149.33.

That the defendant offered in evidence a bill of parcels of the same goods, rendered by and in the handwriting of the plaintiff, Johnston, amounting to 644 16s. Virginia currency, containing a particular account of rum and sugar, beginning with these words: "Mr. Theophilus Harris bought of Dunlap & Johnston," at the foot of which bill was the following receipt, signed by the plaintiff:

"Received, Messrs. Clingman and Magaw's note for the above sum, payable to the order of John Towers or order, endorsed by John Towers and Theophilus Harris payable 2 April, 1798, when paid, received in full,"

which bill was rendered to the defendant by the plaintiff at the time of the sale and delivery.

The defendant further offered evidence to prove that the note in that receipt mentioned was delivered to the defendant with the blank endorsement of Towers,

and by the defendant endorsed in blank to the plaintiff, at the time of the sale and delivery of the goods,

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and by the plaintiff afterwards endorsed to one John Dunlap, who, on 19 April, 1798, brought suit thereon against the present defendant, Harris in the Court of Hustings, in the Town of Alexandria, upon his endorsement, striking out the name of the plaintiff, Johnston, and filling up the defendant, Harris', endorsement with a direct assignment from Harris to Dunlap. That upon that suit judgment was rendered by the court of hustings for Dunlap against Harris, from which judgment he appealed to the Dumfries District Court, where the judgment of the court of hustings was reversed, * and Dunlap appealed from the judgment of the district court to the court of appeals, where the judgment of the district court was affirmed.

The defendant, on the trial of the present suit, also offered evidence to prove that the said John Dunlap, on 19 April, 1798, also commenced suit against Towers, upon his endorsement of the same note, which suit is still pending in the court below. That the said John Dunlap is the same Dunlap whose name is mentioned at the head of the bill of parcels aforesaid, and who is still living.

Whereupon the defendant prayed the court to instruct the jury that upon proof of these circumstances, the plaintiff could not recover in this action for goods sold and delivered and that, from the bill and receipt given as aforesaid, the transaction must be considered as a joint contract. Which instruction the court refused to give as prayed, but directed the jury that the bill of parcels, before mentioned, is evidence (but not conclusive) of a joint contract of sale for the rum and sugar, and that the plaintiff may explain the transaction by parol or other evidence to prove that he

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was the sole owner of the sugar, and that the said Dunlap was the sole owner of the rum, and that the contract for the sale of the sugar was made with the plaintiff in his own right, and that the contract for the sale of the rum was made with him as

agent for Dunlap. But if the plaintiff should produce no such explanatory evidence, he could not maintain the present action.

And the court further instructed the jury that if it should be satisfied, that the contract of sale was made with the plaintiff alone, and that part of the goods was the sole property of the plaintiff, and that the residue was the sole property of Dunlap, and that the plaintiff had authority from Dunlap to sell such residue; then the plaintiff had a right to recover judgment in this action against the defendant, for the whole amount of the goods so sold and delivered, and that the other facts stated are not sufficient to bar the plaintiff.

The 2d bill of exceptions in the present cause stated that the plaintiff produced a witness who proved that the sale of the goods was made in the store of Dunlap, where the goods were deposited; that he never knew Dunlap to claim any title to the sugar, nor the plaintiff to the rum; and that, previous to the sale, Dunlap claimed the rum as his separate property, and the plaintiff claimed the sugar as his separate property, and that Dunlap requested the plaintiff to sell the rum with the plaintiff's sugar. Whereupon, the plaintiff prayed the court to instruct the jury, that the evidence so offered was not competent to contradict or explain the purport of the bill of parcels and receipt, or to show that the plaintiff sold part of the goods as his separate property, and the residue as agent of Dunlap, and that it did not amount to proof of such several property and agency, as could enable the plaintiff to recover, in this action, for the whole of the goods sold.

Which instruction the court refused to give, but instructed the jury, that the declarations of Dunlap, or of the plaintiff, or the request of either of them, cannot be given in evidence, unless the defendant was present, when such declaration or request was made.

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A verdict being rendered for the plaintiff, the defendant moved the court for a new trial, which was refused, and the court ordered the clerk to deliver up to the defendant, the note of Clingman & Magaw, endorsed by Towers, which was

referred to in the receipt, and which was filed in the suit of Dunlap versus the present defendant. *

Upon this case, two questions arose.

1st. Whether the bill of parcels was conclusive evidence of a joint contract of sale, and of the joint property of Dunlap and Johnston?

2d. Whether, under the other circumstances of the case, the plaintiff could recover in this action?

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

This case comes up on two exceptions taken to opinions given in the circuit court.

The plaintiff in the court below had sold to the defendant in that court, certain goods, wares and merchandise, of which he had given him a bill, headed with the words, "Mr. Theophilus Harris bought of Dunlap & Johnston," &c.; At the foot of this bill of parcels was the following receipt:

"Received, Messrs. Clingman and Magaw's note for the above sum, payable to the order of John Towers or order, endorsed by John Towers and Theophilus Harris payable 2 April, 1798, when paid, received in full."

This note was endorsed in blank by the defendant in error, and a suit was instituted upon it by Dunlap against Harris in which suit he ultimately failed, it being the law of Virginia, that on a note, an action by the endorsee can only be maintained against the drawer, or his immediate endorser.

The defendant below objected

1st. That the bill of parcels was conclusive evidence of joint property in the goods sold and delivered, and, therefore, that the action was not maintainable in the name of Johnston alone.

2d. That no action was maintainable on the original contract, the plaintiff below having endorsed the note mentioned in the receipt, and not having reacquired any property in it, so as to be able to restore it to Harris.

No laches are imputed, or are imputable to the holder of the note.

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Both these points were decided against the defendant below, and a judgment was rendered against him from which he has appealed to this Court.

On the first point, the Court is of opinion that there is no error. The written memorandum was not the contract, and was only given to show to what object the receipt at its foot applied. It is not, therefore, a bar to a disclosure of the real fact; it is not conclusive evidence of joint ownership in the property sold, and of a joint sale, but will admit of explanation. The court, therefore, did not err in allowing explanatory evidence to go to the jury, nor in allowing the jury to judge of the weight of that evidence.

On the 2d exception, the material point to be decided is whether an action can be maintained on an original contract for goods sold and delivered, by a person who has received a note as a conditional payment, and has passed away that note.

Upon principle, it would appear that such an action could not be maintained. The endorsement of the note passes the property in it to another, and is evidence that it was sold for a valuable consideration.

If, after such endorsement, the seller of the goods could maintain an action on the original contract, he would receive double satisfaction.

The case cited from 5th Term Reports appears to be precisely in point. The distinction taken by the counsel for the appellee, that in this case Harris can never be sued on the note, is not so substantial as it is ingenious. Harris has a right to the note, in order to have his recourse against his endorsee, and Johnston has not a right to obtain satisfaction for the goods from Harris while he is in possession of

the satisfaction received from Dunlap. In the case quoted from Durnford & East, the liability of the defendant to an action from the actual holder of the note, is not the sole ground on which a disability to sue on the original contract was placed. That disability was also occasioned

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by the obvious injustice, of allowing to the same person a double satisfaction, and of withholding from the debtor, who had paid for the note before he could endorse it, and who would be compelled, by the judgment, to pay for the goods, on account of which he had parted with it, the right of resorting to his endorser. But if it was indispensable to show that Dunlap has a remedy against Harris, it is supposed that the holder of a note may incontestably sue a remote endorser in chancery, and compel payment of it.

The case of *Young v. Clarke*, decided in this Court, does not apply because in that case the plaintiff below had not parted with his property in the note.

The Court does not think that the order (made after the judgment was rendered) for the rendition of the note to the defendant below, can correct the error committed in misdirecting the jury.

The judgment is to be reversed for error in directing the jury that the action was maintainable on the original contract, after the note received as conditional payment had been endorsed.

* It was understood and admitted by the counsel on both sides that the judgment was reversed because the court was of opinion that, in Virginia, the holder of an endorsed promissory note, payable to order, cannot strike out an intermediate blank endorsement, and fill up the blank endorsement of a remote endorser, with an order to pay the money to himself, and that the holder cannot maintain an action against any of the parties to the note, but his own immediate endorser, or the maker of the note.

* The record does not state the whole order of the court upon the motion for a new trial. The Court, upon further argument and consideration, being doubtful whether the plaintiff could support this action, until he had got back the note from Dunlap, informed the plaintiff's counsel that they would grant a new trial, unless the plaintiff would get that note, and return it to the defendant, and also obtain a release from Dunlap to Harris of all right of action for the rum sold.

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