

Hopkirk Vs. Bell

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Court : US Supreme Court

Decided On : 1806

Appeal No. : 7 U.S. 454

Appellant : Hopkirk

Respondent : Bell

Judgement :

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7 U.S. (3 Cranch) 454

*ON CERTIFICATE OF DIVISION OF OPINION AMONG THE JUDGES OF
THE CIRCUIT COURT FOR THE FIFTH CIRCUIT AND VIRGINIA DISTRICT*

SYLLABUS

The treaty of peace between Great Britain and the United States prevents the operation of the act of limitations of Virginia upon British debts contracted before that treaty.

An agent for collecting of debts merely is not a factor within the meaning of the thirteenth section of that act.

This was a case certified from the Circuit Court for the Fifth Circuit, and Virginia District, in chancery sitting, in which the opinions of the judges (Marshall, Ch. J. and Griffin, District Judge) were opposed upon the following question:

"Whether the act of assembly of Virginia for the limitation of actions pleaded by the defendant was, under all the circumstances stated, a bar to the plaintiff's demand founded on a promissory note given on 21 August, 1773?"

The certificate contained the following statement of facts agreed by the parties, *viz.:*

"That David Bell, the defendant's testator, had considerable dealings with the mercantile house of Alexander Spiers, John Bowman & Co. (of which house the plaintiff was surviving partner) in the then colony of Virginia, by their factors who resided in that colony, and on 14 March, 1768, gave his bond to the company for 633 8s. 11d. 1/2, conditioned for the payment of 316 14s. 5d. 3/4 on demand. That he also became further indebted in a balance of 121 Os. 4d. 1/2, an open account for dealings afterwards had with the company by their said factors. That on 21 August, 1773, Henry Bell, the defendant, made his writing, or promissory note, under his hand, attested by two witnesses, in the following words, to-wit:"

" I do hereby acknowledge myself to stand as security to Messrs. Alexander Spiers, John Bowman & Co. of Glasgow, for the sum of four hundred and thirty seven pounds, fourteen shillings and ten-pence, current money of Virginia, being a debt due them by my father, David Bell. Given under my hand, this twenty-first day of August, one thousand seven hundred and seventy-three. I am not to pay the above till it is convenient. "

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"That the said Alexander Spiers, John Bowman & Co. were, at that time, British subjects, merchants, residents in Glasgow, in the Kingdom of Great Britain, and

have never been resident within the limits of the then Colony, now State of Virginia, and that James Hopkirk, the surviving partner, now is and always has been from the time of his birth, a British subject, resident in the Kingdom of Great Britain, and was never within the limits of the Commonwealth of Virginia. That the company had a factor or factors resident in the Commonwealth of Virginia on 21 August, 1773, when the note was given, and from that time to the commencement of the American war, viz., on or about the first of September, 1776. That the company had neither agent or factor in this country, authorized to collect their debts, from the commencement of the war in 1776, until the year 1784. That on or about 10 September, 1784, and ever since, an agent has resided in this commonwealth, authorized by power of attorney, generally to collect all debts due to the company in this commonwealth."

"That by the fourth article of the definitive treaty of peace between the United States and his Britannic Majesty, made 3 September, 1782, 'it is agreed that creditors on either side shall meet with no lawful impediment to the recovery of the full value, in sterling money, of all *bona fide* debts heretofore contracted.' And by the second article of the convention between his Britannic Majesty and the United States, made on 8 January, 1802, 'the said fourth article,' (of the treaty of peace) 'so far as respects its future operation, is recognized, confirmed, and declared to be binding and obligatory,' 'and the same shall be accordingly observed with punctuality and good faith, and so as that the said creditors shall hereafter meet with no lawful impediment to the recovery of the full value in sterling money, of their *bona fide* debts.'"

"That by the acts of the Virginia assembly, passed on the _____ and the practice of the courts, British creditors, their agents, and factors, were prevented from suing with effect for their debts in the courts of this commonwealth, from the —

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day of April, 1774, until the year 1790, and that this suit was commenced on 4 Jan., 1803."

By the fourth section of the Virginia act of limitations, p. 107, actions upon the case on accounts are to be brought within five years after cause of action. By the twelfth section, there is a saving of persons beyond seas, but by the thirteenth section it is provided

"that all suits hereafter brought in the name or names of any person or persons residing beyond the seas, or out of this country, for the recovery of any debt due for goods actually sold and delivered here, by his or their factor or factors, shall be commenced and prosecuted within the time appointed and limited by this act for bringing the like suits, and not after, notwithstanding the saving hereinbefore contained, to persons beyond the seas at the times their causes of action accrued."
"

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The Court ordered the following opinion to be certified to the circuit court:

"Upon the question in this case referred to this Court from the circuit court, it is considered by this Court that the said act of limitations is not a bar to the plaintiff's demand on the said note, and this Court is of opinion that the length of time from the giving the note to the commencement of the war in 1775 not being sufficient to bar the demand on the said note, according to the said act of assembly, the treaty of peace between Great Britain and the United States of 1783 does not admit of adding the time previous to the war, to any time subsequent to the treaty, in order to make a bar, and is also of opinion that the agent merely for collecting debts, mentioned and described in the said state of facts, is not to be considered as a factor within the meaning of the said act of assembly, so as to bring the case within the proviso of said act."

By this the Court is not to be understood as giving an opinion on the construction of the note as to the time of payment.