Slacum Vs. Pomery

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Court : US Supreme Court

Decided On : 1810

Appeal No. : 10 U.S. 221

Appellant : Slacum

Respondent : Pomery

Judgement :

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10 U.S. (6 Cranch) 221

ERROR TO THE CIRCUIT COURT FOR THE

DISTRICT OF COLUMBIA SITTING IN ALEXANDRIA

SYLLABUS

In an action by the endorsee against the endorser of a foreign bill of exchange, the defendant is liable for damages according to the law of the place where the bill was endorsed.

The endorsement is a new and substantive contract.

In an action of debt against the endorser of a bill of exchange under the statute of Virginia, it is necessary that the declaration should aver notice of the protest for nonpayment.

It is not too late to allege as error in the appellate court a fault in the declaration which ought to have prevented the rendition of a judgment in the court below.

Error to the Circuit Court for the District of Columbia sitting in Alexandria in an action of debt (under the law of Virginia) brought by Pomery against Slacum, as endorser of a bill of exchange, dated 6 August, 1807, drawn in the Island of Barbados by Charles Cadogan, a merchant residing there, at 60 days' sight, upon Barton, Irlam & Higginson, at Liverpool, in England, for 138 17s. 9d. sterling, payable to Slacum or order, who endorsed it at Alexandria in the District of Columbia to the plaintiff.

The declaration was

"of a plea that he render unto him 138 17s. 9p., sterling money of Great Britain, with interest at the rate of five percentum per annum, from 23 December, 1807, until paid, together with fifteen percent damages on the said 138 17s. 9p., and 10s. 6p. sterling, of the value of $2.33, current money of the United States, costs of protest, which to him he owes,"

&c.;

It then stated the making and endorsing of the bill, the nonacceptance and nonpayment, and the protest for nonpayment,

"by reason of which premises, and by force of the statute in that case made and provided, action hath accrued to the plaintiff to demand and have of the defendant the said sum of 138 17s. 9d. sterling, and interest at the rate of five percent per annum, from 23 December, 1807, until paid,

together with fifteen percent damages, and 10s. 6p. sterling, of the value,"

&c.;

Upon the trial of the cause on the issue of *nil debet,* the defendant below took a bill of exceptions, stating that evidence was offered of the bill, the endorsement by the defendant to the plaintiff in Alexandria (both parties being inhabitants of that town), the protest for nonpayment, and that, by the laws of Barbados, the damages, upon protested bills of exchange, were only ten percent upon the principal and interest due upon the bill. Whereupon the defendant prayed the court to instruct the jury that the plaintiff was not entitled to recover more than the damages allowed upon protested bills according to the law of Barbados, and that he was not entitled in this case to fifteen percent damages, which instruction the court refused to give.

The verdict and judgment being for the plaintiff for the whole amount demanded in the declaration, the defendant brought his writ of error.

The act of assembly of Virginia provides

"That where any bill of exchange is or shall be drawn for the payment of any sum of money in which the value is or shall be expressed to be received, and such bill is or shall be protested for nonacceptance or nonpayment, the drawer or endorser shall be subject to fifteen percentum damages thereon, and the bill shall carry an interest of five percentum per annum from the date of protest, until the money therein drawn for shall be fully satisfied and paid. . . . And that it shall be lawful for any person or persons having a right to demand any sum of money upon a protested bill of exchange to commence and prosecute an action of debt for principal, damages, interest, and charges of protest against the drawers or endorsers jointly or against either of them separately, and judgment shall and may be given for such principal, damages, and charges, and interest upon such principal, after the rate aforesaid to the time of such judgment and for interest upon the said principal money recovered after the rate

of five percentum per annum until the same shall be fully satisfied. "

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court as follows:

Upon a critical examination of the act of assembly on which this action is founded, the Court is of opinion that it is rightly brought. Although the drawer of the bill was not liable to the damages of Virginia, the endorser is subject to them, he having endorsed the bill in Alexandria. The words of the act are that where a bill of exchange shall be protested, "the drawer or endorser shall be subject to 15 percent damages thereon." The third section gives an action of debt "against the drawers or endorsers jointly, or against either of them separately." The act of assembly appears to contemplate a distinct liability in the endorser, founded on the contract created by his own endorsement, which is not affected by the extent of the liability of the drawer. This is the more reasonable as a bill of exchange is taken as much on the credit of the endorser as of the drawer, and the endorsement is understood to be not simply the transfer of the paper, but a new and a substantive contract.

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There is, however, an objection taken to this declaration. It omits to allege notice of the protest -- an omission which is deemed fatal.

It has been argued that, the act of assembly which gives the action of debt not requiring notice to be laid in the declaration, that requisite, which is only essential in an action founded on the custom of merchants, is totally dispensed with. But this Court is not of that opinion. In giving the action of debt to the holder of a bill of exchange, and in giving it the dignity of a specialty, the legislature has not altered the character of the paper in other respects. It is still a pure commercial transaction governed by commercial law. Notice of the protest is still necessary, and the omission to aver it in the declaration is still fatal.

Had this error been moved in arrest of judgment, it is presumable the judgment would have been arrested; but it is not too late to allege as error, in this Court a fault in the declaration which ought to have prevented the rendition of a judgment in the court below.

The judgment is arrested and the cause remanded with direction that the judgment be arrested.

After the opinion was delivered, Youngs prayed that the cause might be remanded with leave to amend

MR. CHIEF JUSTICE MARSHALL. Here is a verdict which must be set aside before an amendment can be allowed.

It might be set aside by the court below, but this Court can see no reason in the record for setting it aside.