Finley Vs. Lynn

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Appeal No. : 10 U.S. 238

Appellant : Finley

Respondent : Lynn

Judgement :

Finley v. Lynn - 10 U.S. 238 (1810)
U.S. Supreme Court Finley v. Lynn, 10 U.S. 6 Cranch 238 238 (1810)

Finley v. Lynn

10 U.S. (6 Cranch) 238

ERROR TO THE CIRCUIT COURT

OF THE DISTRICT OF COLUMBIA

SYLLABUS

A bond executed in pursuance of articles of agreement may, in equity, be restrained by those articles.

A complainant in equity may have relief even against the admissions in his bill.

Error to the Circuit Court for the District of Columbia in a suit in chancery, brought by Finely against Lynn.

The bill stated that on 27 February, 1804, the plaintiff and defendant entered into articles of co-partnership, by which the stock to be furnished by the plaintiff was to consist of one-half of the ship *United States* and $5,000, and by the defendant, his gold and silver manufactory, two lots in the City of Washington, all his stock of merchandise, and the rents of two houses. That a part of the merchandise agreed to be furnished consisted of plate, jewelry, &c.;, purchased by the defendant of Messrs. Lemuel Wells & Co. to the amount, as was then supposed, of $2,300, and, in consideration of its being brought into the joint stock, the plaintiff agreed to pay one-half of the debt due to Wells & Co. therefor.

That the business of the concern was conducted in two separate stores, *viz.,* a hardware store principally

Page 10 U. S. 239

under the management of the plaintiff, and a jewelry store under the management of the defendant, containing the stock of jewelry, &c.;, brought into the joint concern by the defendant, and that which was purchased of Wells & Co. The business of the co-partnership was carried on until 1 March, 1805, when a dissolution took place. During that period goods were bought and carried into the jewelry store, and at the time of the dissolution, "the jewelry store was indebted to said concern" in the sum of $2,825.27, besides which the concern had paid Wells & Co. in part of their debt, the sum of $263.56. That the dissolution was upon the following terms, *viz.,* that the defendant should withdraw all the property put into the joint stock by him, and should have the goods in the jewelry store and all the debts due to that store as a compensation and in lieu of the profits arising upon the whole business. And the plaintiff was to take on his account the goods in the hardware store, and the goods which were ordered for the spring, and was to indemnify the defendant from all claims or demands upon the concern or which

might arise from goods then ordered and not at that time received, which articles of dissolution were under seal. That when the plaintiff signed the articles of dissolution, he did not intend to commit himself to the payment of the debt due to Wells & Co. For although, by the articles of co-partnership, he had agreed to pay half the debt, yet as the goods were given up to the defendant upon the dissolution, he considered himself absolved from that obligation. And the plaintiff contends that the defendant ought to have been satisfied when the plaintiff

"returned to him the whole jewelry store, with the accession of nearly $3,000 worth of merchandise, and gave up to him the profits of the said store, which he believes to be equal to $2,500 more."

That upon the dissolution, the plaintiff agreed to give the defendant security for his performance of the terms of the dissolution, and the defendant had a bond prepared which was signed by the plaintiff and his sureties; that the plaintiff did not see the bond until he was called

Page 10 U. S. 240

on to sign it, and that he is satisfied he never read it, taking it for granted that it was a bond to compel him to perform what he was bound to perform by the terms of the dissolution, and that his sureties executed it under the same circumstances and impression. That the defendant did not claim payment of the debt due to Wells & Co. for a year after the bond was executed, although Wells & Co., before the dissolution, had brought suit against the defendant therefor; that the defendant had rendered the plaintiff some accounts in which that debt was not mentioned. That the defendant afterwards brought suit upon the plaintiff's bond, and gave notice that he should claim the whole amount of the debt due to Wells & Co. That the plaintiff's counsel was of opinion that the bond was so worded as to bind the plaintiff to the payment of that debt, whereupon the plaintiff confessed a judgment at law, saving his right to relief in equity. That the bond was executed under a mistaken impression of its contents, and that the defendant will take out execution upon the judgment at law. The bill then prays an injunction to stay execution until the matter in dispute can be heard and decided in equity, and the accounts

between the plaintiff and defendant examined and settled, and for general relief.

The injunction was granted by one of the judges out of court.

In the articles of co-partnership, after stating what stock the plaintiff should bring into the joint concern, the debt to Wells & Co. is mentioned in the following manner, *viz.,*

"And on the part of Adam Lynn, his gold and silver manufactory, two lots in the City of Washington, all his stock of merchandise (the said O. P. Finley and Adam Lynn, jointly and severally, by these presents, binding themselves, their heirs, executors, administrators and assigns, to pay to Lemuel Wells & Co. of New York, $2,300, money due to them on account of said merchandise), the rents of one house,"

&c.;

The account against the jewelry store was an account

Page 10 U. S. 241

opened in the books of the company, charging that store with goods purchased and put into it for sale on the joint account, and giving it credit by cash and by goods sold to sundry persons, showing a balance of goods remaining in that store of $2,825.27 1/2 over and above the goods which were in it at the commencement of the co-partnership.

The articles of dissolution were truly recited in the bill.

The condition of the bond of indemnity was as follows:

"Whereas the said O. P. Finley and Adam Lynn, late joint merchants and co-partners under the firm of Finley & Lynn, have by mutual consent dissolved the said co-partnership on the first day of the present month, on which dissolution it was, among other things, agreed between the said Oliver P. Finley and the said Adam Lynn, that the said Oliver P. Finley should satisfy and pay all debts and

contracts due from or entered into by the said co-partnership, or either of the said co-partners, for or on account of, or for the benefit of the said co-partnership, including certain debts due from the said Adam Lynn, for goods by him ordered, which have been received by the said co-partnership, and also all debts which may arise from merchandise hereafter shipped to the said concern in consequence of any orders heretofore made, now the condition of the above obligation is such that if the said Oliver P. Finley shall well and truly satisfy and discharge all the debts and contracts hereinbefore described so as to indemnify and save harmless the said Adam Lynn from the payment of the same, and from any suit or prosecution in law or equity for or on account of the said debts and contracts, then this obligation to be void."

There was also raised in the books of the concern an account against "merchandise," the balance to the debit of which was $4,028.89. And a statement of hardware imported on the joint account before March, 1805, amounting to $7,653.08.

Page 10 U. S. 242

And of debts of the concern paid by Finley amounting to about $6,000.

The defendant's answer admits the original articles of co-partnership and of dissolution, and the bond as referred to in the bill. It denies that the plaintiff advanced the $5,000 in cash, and avers that the profits of the ship *United States* never came to the use of the concern, but were retained by Rickets & Newton, to whom the plaintiff had transferred his half of that ship. It avers that by the articles of co-partnership each party was to bring into the joint stock $11,000. That the defendant brought in $2,429 more than his proportion, which was the reason of making the debt to Wells & Co. a partnership debt, after which there was still an excess of capital, amounting to $129 furnished by the defendant, for which he had credit upon the first opening of the partnership books.

The entry of stock on 1 March, 1804, was as follows:

s. d.

Cash in England 1,500 0 0

One half ship United States . . . 1,800 0 0

Real estate 1,290 0 0

Manufactory 1,200 0 0

Merchandise 1,538 14 0

7,328 14 0

Due from stock to L. Wells &

Co. of N.Y. 690 0 0

To Adam Lynn. 38 14 0

It avers that the debt to Wells & Co. was, from this period, always considered by both parties as a co-partnership debt, and that it was by the advice of the plaintiff that the defendant suffered himself to be sued for that debt.

It admits that some goods were brought from the hardware store to the jewelry store, but avers goods to a large amount were also taken from the latter to

Page 10 U. S. 243

the former store, of which no account was kept. It denies that the account exhibited by the plaintiff against the jewelry store is correct, and avers that if a true account had been kept, the balance would have been in favor of that store. It avers that it was the intention of the defendant, and he believes of the plaintiff also, in the articles of dissolution, to include the debt due to Wells & Co. under the description of "all claims and demands on the concern." That it was adopted as a social debt by the articles of co-partnership, and was placed to the credit of Wells & Co. on the books of the concern, and a partial payment made out of the joint

funds. That if this credit had not been so given, the defendant would have been a creditor of the concern to the amount of $2,429 instead of $129. That the plaintiff had paid many of the debts due from the jewelry store which were situated exactly like that of Wells & Co.

The answer expressly avers that the plaintiff did read, examine, and, as the defendant believes, perfectly understand the bond of indemnity before he executed it. That it was left with him some hours before he signed it. And it avers also positively that the plaintiff's sureties read it and made remarks to the defendant in the presence of the plaintiff upon the manner in which it was drawn.

It states that the defendant offered the plaintiff two propositions as the basis of the dissolution. One was that a dividend should be made of the debts, the profits, and the stock, and if any difference should arise, on settlement, it should be submitted to three merchants. The other was that the defendant should have the merchandise in the jewelry store and the debts due to that store as a compensation in lieu of the profits of the whole business; that the plaintiff should hold the merchandise in the hardware store, and the debts due to it, and the profits of the trade, and should pay all debts and contracts as stated in the bond, the latter of which propositions was accepted by the plaintiff.

The answer denies that the defendant received back the jewelry store with the accession of $3,000 worth of merchandise, or that the profits were equal to $2,500. It avers that the defendant believes they did not exceed $1,250, and were less than those of the hardware store. That the profits of the ship *United States* were at least $4,000. These the defendant relinquished to obtain indemnity against the debts of the concern. That the plaintiff refused to take an inventory at the time of dissolution, so that an accurate account cannot be taken. That the reason why he did not sooner claim from the plaintiff the amount due to Wells & Co. was that he was under an erroneous opinion that he could have no recourse to the plaintiff until he should first have paid and discharged that debt.

The answer denies any agreement between the plaintiff and defendant to acquit each other of their private debts.

The only testimony in the cause related to the profits of the ship *United States* and the accounts exhibited being true copies from the books.

The court below, conceiving that the whole equity of the bill was completely denied by the answer, and not supported by the evidence in the cause, dissolved the injunction, and, upon final hearing, dismissed the bill; whereupon the plaintiff brought his writ of error.

Page 10 U. S. 247

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

The plaintiff and defendant had been co-partners in trade, and had carried on their business in two stores -- the one a jewelry store in the name of Lynn, to be conducted exclusively by him, the other a hardware store in the name of Finley & Lynn, to be under the joint management of the partners.

Previous to the commencement of their partnership, Lynn had contracted a debt to Lemuel Wells & Co. of New York, for goods ordered for a jewelry store carried on by himself, which goods it was mutually agreed to transfer to the new concern, and the debt to Lemuel Wells & Co. should become a debt chargeable on the social fund.

In February, 1805, it was agreed to dissolve the co-partnership, and articles were entered into to take

Page 10 U. S. 248

effect on the first day of March. The terms were

"That Adam Lynn shall withdraw all the property put into the joint stock by him, and that he shall have the goods in the jewelry store, and all the debts due to that store, as a compensation in lieu of the profits arising from the whole business, and

the said Finley agrees to take, on his own account, the goods in the hardware store, and the goods which are ordered in the spring, and to indemnify the said Adam Lynn from all claims or demands upon the said concern or which may arise for goods now ordered and not yet arrived."

On the second of March, a bond of indemnity was executed, the condition of which, after stating the dissolution, proceeds thus:

"On which dissolution it was, among other things, agreed that the said Oliver P. Finley should satisfy and pay all debts and contracts due from or entered into by the said co-partnership, or either of the said co-partners, for or on account of or for the benefit of the said co-partnership, including certain debts due from the said Adam Lynn for goods by him ordered, which have been received by the said co-partnership, and also all debts which may arise from merchandise hereafter shipped to the said concern, in consequence of any orders heretofore made."

"Now the condition of the above obligation is such that if the said Oliver P. Finely shall well and truly satisfy and discharge all the debts and contracts hereinbefore described so as to indemnify and save harmless the said Adam Lynn from the payment of the same and from any suit or prosecution in law or equity for or on account of the said debts and contracts, then this obligation to be void."

Sometime previous to the dissolution, an action had been brought by Lemuel Wells & Co. against Adam Lynn for the recovery of this debt which was then depending.

In December, 1806, Adam Lynn for the first time claimed, under the bond of indemnity, the amount of

Page 10 U. S. 249

the debt to Lemuel Wells & Co. and, payment being refused, instituted a suit on the bond. Supposing that no defense could be made at law, judgment was confessed, with a reservation of all equitable objections to the payment. A bill was then filed suggesting that the bond was executed by mistake and in the confidence

that it was in exact conformity with the articles and praying that it might be restrained by the articles. Several extrinsic circumstances are also detailed and relied upon as demonstrating that Lynn himself did not suppose, until so informed by counsel, that the bond comprehended this debt.

An injunction was granted which, on the coming in of the answer, was dissolved, and on a final hearing the bill was dismissed.

The answer denies all the allegations of the bill which go to the mistake under which the bond was executed, insists that it conforms to the true meaning of the articles and intent of the parties, and endeavors to explain those extrinsic circumstances on which the plaintiff relied.

That a bond executed in pursuance of articles may be restrained by those articles if the departure from them be clearly shown is not to be controverted. But in this case, the majority of the Court is of opinion that no such departure is manifested with sufficient clearness to justify the interposition of a court of equity.

By the articles of co-partnership, the debt to Lemuel Wells & Co. was assumed by the firm of Finley & Lynn, and was payable out of the partnership fund. It is true that at law it did not constitute a demand against the partnership, but the Court is much inclined to the opinion that, had Lynn become insolvent, a suit in equity might have been sustained on this claim against Finley & Lynn.

If it might in equity, though not in law, be a "claim

Page 10 U. S. 250

or demand upon the concern," there does not appear to be such a repugnancy between the bond and the articles as to induce the Court to say that the bond, which, so far as is shown in this cause, was executed without imposition and with a knowledge of its contents, binds the obligors further than they intended to be bound. The extrinsic circumstances relied on are certainly entitled to much consideration, but they are not thought sufficiently decisive and unequivocal in their character to justify a court of equity in restraining legal rights acquired under

a solemn contract.

Though this is the principal object of the bill, it may be understood to contemplate something further. It prays for a settlement of all accounts, and for general relief.

So far as the accounts between the parties are closed by the articles of dissolution, no reason can be assigned for opening them. But if rights growing out of those articles require a settlement, the plaintiff is entitled to an account.

By a majority of the Court it is conceived that if any profits had arisen on the jewelry store independent of the goods in hand and of the debts due to the store, the plaintiff is entitled to them. It is not probable that there are such profits, but it is very possible that there may be. Large sums of money may have been received, and might either be on hand when the dissolution took place or have been diverted to various uses. If such be the fact, the majority of the Court is of opinion that any fair construction of the articles gives those profits to the plaintiff. The contract is that Adam Lynn shall have "the goods in the jewelry store and all the debts due to that store as a compensation in lieu of the profits arising from the whole business." Now the profits of the jewelry store, if any, not existing in debts or goods were certainly a part of the "profits of the whole business," and are consequently yielded to the plaintiff.

That this was the deliberate intention of the defendant

Page 10 U. S. 251

is avowed in his answer. A proposition for a dissolution was, he says, made by him in writing and accepted by the plaintiff. That proposition is

"that the defendant should have the merchandise in the jewelry store and the debts due to that store as a compensation in lieu of the profits of the whole business; that the complainant should hold the merchandise in the hardware store and the debts due to it and the profits of the trade."

Now the profits of the jewelry store are certainly a part of the "profits of the trade."

The plaintiff also claims a debt said to be due from the jewelry store to the hardware store.

As all the debts due to the hardware store are obviously assigned to Finley, this debt becomes his property unless his claim to it is relinquished by the undertaking to pay all debts due from the concern.

The words of this undertaking are to be looked for in the condition of his bond. He is to

"satisfy and pay all debts and contracts due from, or entered into by, the said co-partnership, or either of the said co-partners, for or on account of or for the benefit of the said co-partnership."

The terms of this stipulation appear to the Court to be applicable to claims upon the co-partnership, and not to claims of a part of the company on the other part. He is to satisfy and pay all debts and contracts due from, or entered into by, the said co-partnership, not to release the claim of one store upon the other. This is a claim which did not exist upon the co-partnership, and which grows out of the articles of dissolution. Those articles assign to the plaintiff all the profits of the hardware store as well as the debts due to it. They separate what was before united. They draw the distinction between the hardware and the jewelry store, and make the debt due to the hardware store a part of the profits of that store.

The residue of the condition does not affect the question, and need not be recited.

It is, then, the opinion of a majority of the Court that if there was really a debt due from the jewelry store to the hardware store, Finley is entitled to that debt.

This is a proper subject for an account.

The plaintiff has probably not applied for this account in the court below, and it does not appear to be a principal object of his bill. This Court therefore doubted

whether it would be most proper to affirm the decree dismissing the bill with the addition that it should be without prejudice to any future claim for profits, and for the debt due from one store to the other, or to open the decree and direct the account. The latter was deemed the more equitable course. The decree therefore is to be

Reversed and the cause remanded with directions to take an account between the two stores and an account of the profits of the jewelry store if the same shall be required by the plaintiff.

TODD, J. concurred in the opinion of the Court that the debt of Wells & Co. was a debt to be paid by Finley, but he differed upon the other part of the case, being of opinion that the complainant was not entitled to a relief which by his bill he had made a merit of waiving.

Decree reversed and the cause remanded with directions to reinstate the injunction and take an account, &c.;