Sheehy Vs. Mandeville and Jamessen

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Court : US Supreme Court

Decided On : 1810

Appeal No. : 10 U.S. 253

Appellant : Sheehy

Respondent : Mandeville and Jamessen

Judgement :

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Sheehy v. Mandeville & Jamessen

10 U.S. (6 Cranch) 253

ERROR TO THE CIRCUIT COURT OF THE DISTRICT

OF COLUMBIA FOR THE COUNTY OF ALEXANDRIA

SYLLABUS

A promissory note given and received for and in discharge of an open account is a bar to an action upon the open account, although the note be not paid.

This Court will not direct the court below to allow the proceedings to be amended.

A several suit and judgment against one of two joint makers of a promissory note is no bar to a joint action against both upon the same note.

The whole of, a joint note is not merged in a judgment against one of the makers on his individual assumpsit, but the other may be charged in a subsequent joint action if he pleads severally.

Error to the circuit court for the District of Columbia sitting at Alexandria, in an action of assumpsit

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brought by Sheehy against Joseph Mandeville and R. B. Jamesson.

The declaration consisted of three counts.

The first count was upon a promissory note as follows, *viz.,*

"James Sheehy complains of Joseph Mandeville and Robert Brown Jamesson, lately trading under the firm of Robert Brown Jamesson, of a plea of trespass on the case for that whereas, on 17 July, 1804, the said defendant Joseph Mandeville, secretly trading with the defendant Robert B. Jamesson by way of buying and selling merchandise, at Alexandria in the county aforesaid, under the name, title, style, and firm of Robert Brown Jamesson, and whereas the said defendants under the said name, firm, and style, on the said 17 July, 1804, at, &c.;, made their certain note in writing, called a promissory note, subscribed by them by and under the name, style, title and firm of Robert B. Jamesson, bearing date the same day and year, and then and there delivered the said note to the plaintiff, and by the said note did, under their firm aforesaid, promise to pay to the said plaintiff or to his order $604.91 for value received, negotiable at the Bank of Alexandria, by reason whereof and by force of the law in such cases made and provided the said defendants became liable to pay to the plaintiff the said sum of money contained in the said note according to the tenor and effect of the said note, and being so liable, they, the said defendants, under the name and firm

aforesaid, afterwards, to-wit, the same day and year aforesaid, at Alexandria aforesaid, undertook,"

&c.;

The second count was *indebitatus assumpsit* for goods sold and delivered to the defendants under the name and firm of Robert B. Jamesson.

The third count was a *quantum valebant* for the same goods.

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The defendants were duly arrested, but Jamesson was discharged by a judge upon entering a common appearance, he having been before discharged under the act of Congress for the relief of insolvent debtors within the District of Columbia, and no further proceedings seem to have been had against him.

The defendant Mandeville appeared and filed two pleas.

1st plea.

"And the said defendant, by George Youngs, his attorney, comes and defends the wrong and injury, when, &c.;, protesting that the said goods, wares and merchandise, in the declaration mentioned, were not sold and delivered to the said Robert B. Jamesson and this defendant jointly, for plea saith that the said James ought not to have and maintain his action aforesaid against him because he says that heretofore, to-wit, on 17 July, 1804, at Alexandria, the said Robert B. Jamesson, in the declaration named, made his promissory note, payable to the said James Sheehy or order, sixty days after date, for $604.91, negotiable at the Bank of Alexandria, which said note, so as aforesaid made by the said Jamesson, was given by the said Jamesson to the said James Sheehy and by him received for and in discharge of an account or bill of the said James Sheehy against the said R. B. Jamesson for sundry goods, wares, and merchandise at the special instance and request of the said R. B. Jamesson sold and delivered by the said James to the said Robert B. Jamesson. And the said defendant Joseph avers that

the said goods, wares and merchandise mentioned in the plaintiff's declaration are the same goods, wares, and merchandise so as aforesaid sold and delivered to the said Robert B. Jamesson by the said James Sheehy, and the same for which the said R. B. Jamesson gave his aforesaid negotiable note, and none other, and afterwards, to-wit, on 8 June, 1805, the said James Sheehy sued out of the clerk's office of the Circuit Court of the District of Columbia for the County of Alexandria his writ in an action of debt upon the aforesaid note against the said Robert B. Jamesson, and such proceedings

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were had therein that at the July term of the said court in the year 1806 a judgment was rendered in favor of the said James Sheehy against the said R. B. Jamesson for the debt and damages mentioned in the declaration filed in that action, to be discharged by the payment of the said $604.91, with interest from 15 September, 1804, till paid, which will at large appear by the records of the said court now here remaining in the said Circuit Court of the District of Columbia for the County of Alexandria, which judgment still remains unreversed and in full force, all of which the said defendant is ready to verify; wherefore he prays judgment whether the said plaintiff his action aforesaid ought to have and maintain against him upon the second and third counts in the said declaration,"

&c.;

"2d plea. And the said defendant, by leave of the court, . . . for further plea saith that the plaintiff his action aforesaid against him ought not to have and maintain on the first count in his said declaration because he saith that heretofore, to-wit, on 8 June, 1805, the said James Sheehy sued out of the clerk's office of the Circuit Court of the District of Columbia for the County of Alexandria his writ in an action of debt against the said Robert B. Jamesson, and afterwards, in July, filed his declaration therein upon a note of the said Robert B. Jamesson to the said James Sheehy, dated 17 July, 1804, payable sixty days after date, for $604.91, for value received, negotiable at the Bank of Alexandria, and afterwards such proceedings were had in the said suit that at July term, of the said court in the year 1806

judgment was rendered therein in favor of the said James Sheehy against the said Robert B. Jamesson for the debt and damages in the said declaration mentioned to be discharged by the payment of $604.91, with interest from 15 September, 1804, until paid, and also costs of suit; all which the said defendant is ready to verify by the record and proceedings of the said court, . . . which said judgment still remains unreversed and in full force, also to be verified by the record. . . . And the

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said defendant avers that the promissory note in the first count in the plaintiff's declaration mentioned and described is the same note upon which the aforesaid judgment was rendered and obtained, against the said Robert B. Jamesson as aforesaid, and not other or different, and this the said defendant is ready to verify; whereupon the defendant prays judgment if the said plaintiff ought to have and maintain his action aforesaid against him upon the first count in the said declaration,"

&c.;

To the first plea the plaintiff demurred, and assigned as causes of demurrer,

1. That the plea does not traverse the assumpsit laid in the declaration.

2. It does not expressly confess or deny that the goods were sold and delivered to the said Joseph Mandeville and Robert B. Jamesson, nor that the note in the declaration mentioned was given by the said house and firm of Robert B. Jamesson.

3. An unsatisfied judgment against Robert B. Jamesson is no bar to an action upon the same cause of action against the other defendant, against whom no judgment has been rendered.

4. It does not aver that the judgment against Jamesson has been satisfied.

5. It does not deny or admit that the defendant, Mandeville, assumed to pay for the goods.

6. The plea is no answer to the declaration.

To the second plea the plaintiff also demurred, and assigned the same causes of demurrer.

The judgment of the court below upon these demurrers was in favor of the defendant Mandeville, and the plaintiff brought his writ of error.

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

The plaintiff sold certain goods to Robert B. Jamesson,

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a merchant of Alexandria, and took his note for the amount, which he put in suit and prosecuted to a judgment. Afterwards, supposing the other defendant Mandeville to be a secret partner, he instituted a suit against Mandeville and Jamesson. The declaration contains three counts. The first is on the note, and charges it to have been made by the defendants under the name, firm and style of Robert B. Jamesson. The 2d and 3d counts are for goods, wares and merchandise sold and delivered to the defendants, trading under the firm of Robert B. Jamesson.

The defendant Mandeville pleads two pleas in bar. The first goes to the whole declaration, and the second applies only to the first count.

The first commences with a protestation that the goods, &c.;, in the declaration mentioned were not sold to the defendants jointly, and then pleads in bar the promissory note which is averred to have been given and received for, and in discharge of, an account for sundry goods, wares, and merchandise sold and delivered to the said Jamesson, and that the goods in the declaration mentioned are the same which were sold and delivered to the said Jamesson, and for which the said note was given. The plea also avers that a suit was instituted and

judgment obtained on the note, and concludes in bar.

The second plea pleads the judgment in bar of the action.

To the first plea the plaintiff demurs specially, and assigns for cause of demurrer,

1. That the defendant does not traverse the assumpsit laid in the declaration.

2. That he does not expressly confess or deny that the goods, &c.;, were sold and delivered to the defendants, trading under the firm of R. B. Jamesson, or that the note was given by the said firm.

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3. Because an unsatisfied judgment against Jamesson is no bar to an action against Mandeville.

4. It is not averred that the judgment has been satisfied.

5. The defendant does not deny or admit that he assumed to pay for the goods, &c.;, in the declaration mentioned.

6. Because the plea is no answer to the declaration, or any count thereof, and is informal.

The defendant joins in demurrer.

To the second plea the plaintiff also demurs specially, and assigns for cause of demurrer the same, in substance, which had been assigned to the first plea, and the defendant joins in the demurrer to this plea likewise.

The other defendant, Jamesson, has put in no plea, nor are there any proceedings against him subsequent to the declaration.

Although the first plea is not expressly limited to the 2d and 3d counts, yet it would seem from its terms to be intended to apply to them alone. It sets up a bar to an action on an assumpsit for goods, wares, and merchandise sold and delivered,

and no such assumpsit is laid in the first count.

If, however, it be considered as pleaded to the first count, it is clearly ill on demurrer. For it does not deny or avoid the joint assumpsit laid in that count.

It remains to inquire whether this plea contains a sufficient bar to the 2d and 3d counts.

The plea is that the note was given and received for and in discharge of an account or bill for goods, wares and merchandise sold and delivered by the plaintiff to Robert B. Jamesson, which are the same goods, &c.;, that are mentioned in the plaintiff's declaration.

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That a note, without a special contract, would not of itself discharge the original cause of action is not denied. But it is insisted that if, by express agreement, the note is received as payment, it satisfies the original contract, and the party receiving it must take his remedy on it.

This principle appears to be well settled. The note of one of the parties or of a third person may, by agreement, be received in payment. The doctrine of *nudum pactum* does not apply to such a case, for a man may, if such be his will, discharge his debtor without any consideration. But if it did apply, there may be inducements to take a note from one partner liquidating and evidencing a claim on a firm which might be a sufficient consideration for discharging the firm. Since, then, the plaintiff has not taken issue on the averment that the note was given and received in discharge of the account, but has demurred to the plea, that fact is admitted, and, being admitted, it bars the action for the goods.

The special causes of demurrer which are assigned do not in any manner affect the case. Whether the promise was made by Mandeville or not ceases to be material if a note has been received in discharge of that promise, and the payment of the note need not be averred, since its nonpayment cannot revive the extinguished assumpsit.

The next subject of consideration is the second plea, which applies simply to the first count.

That count is on a note charged to have been made by Mandeville and Jamesson, trading under the firm of Robert B. Jamesson. This, not being denied, must be taken as true.

The plea is that a judgment was rendered on this note against Robert B. Jamesson.

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Were it admitted that this judgment bars an action against Robert B. Jamesson, the inquiry still remains if Mandeville was originally bound; if a suit could be originally maintained against him; is the note, as to him, also merged in the judgment?

Had the action in which judgment was obtained against Jamesson been brought against the firm, the whole note would most probably have merged in that judgment. But that action was not brought against the firm. It was brought against Robert Brown Jamesson singly, and whatever other objections may be made to any subsequent proceedings on the same note, it cannot be correctly said that it is carried into judgment as respects Mandeville. If it were, the judgment ought in some manner to bind him, which most certainly it does not. The doctrine of merger (even admitting that a judgment against one of several joint obligors would terminate the whole obligation, so that a distinct action could not afterwards be maintained against the others, which is not admitted) can be applied only to a case in which the original declaration was on a joint covenant, not to a case in which the declaration in the first suit was on a sole contract.

In point of real justice, there can be no reason why an unsatisfied judgment against Jamesson should bar a claim upon Mandeville, and it appears to the Court that this claim is not barred by any technical rule of law, since the proceedings in the first action were instituted upon the assumpsit of Jamesson individually.

It is not necessary to decide whether this action could have been maintained against Mandeville singly with an averment that the note was made by Mandeville and Jamesson. The declaration being against both partners, that question does not arise. The declaration is clearly good in itself, and the plaintiff may recover under it unless he be barred by a sufficient plea.

Admitting for the present that a previous judgment

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against Jamesson would be a sufficient bar as to him had Jamesson and Mandeville joined in the same plea, it would have presented an inquiry of some intricacy how far the benefit of that bar could be extended to Mandeville.

But they have not joined in the same plea. They have severed, and as the whole note is not merged in a judgment obtained against Jamesson on his individual assumpsit, the Court is not of opinion that Mandeville has so pleaded this matter as to bar the action.

In this plea it was necessary to negative the averment of the declaration that the note was made by Mandeville as well as Jamesson, or to show that the judgment was satisfied. The defendant has not done so. He has only stated affirmatively new matter in bar of the action, which new matter, as stated, does not furnish a sufficient bar. It is not certain that this plea would have been good on a general demurrer, but on a special demurrer it is clearly ill.

The judgment therefore is to be reversed, and, as no other plea is pleaded, judgment must be rendered on the first count in favor of the plaintiff.

The judgment of the court was as follows:

This cause came on to be heard on the transcript of the record, and was argued by counsel, on consideration whereof the Court is of opinion that there is error in the judgment of the circuit court in overruling the demurrer to the first plea so far as the same is pleaded in bar of the first count in the declaration, and that there is

error in overruling the demurrer to the second plea; wherefore it is considered by this Court that the judgment of the circuit court be reversed and annulled and that the cause be remanded to the circuit court with directions to sustain the demurrer to the first plea so far as the same is pleaded in bar of the first count, in the plaintiff's declaration, and also to sustain the demurrer to the second plea, and to render

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judgment in favor of the plaintiff on his said first count, and to award a writ of inquiry of damages. *

* After the opinion was given, C. Lee moved for a direction to the court below to allow a plea of *nonassumpsit.* The court said it had never given directions respecting amendments, but had left that question to the court below. This Court cannot now undertake to say whether the court below would be justified in granting leave to amend.