Sheehy Vs. Mandeville

Sheehy Vs. Mandeville

SooperKanoon Citation : sooperkanoon.com/78548

Court : US Supreme Court

Decided On : 1812

Appeal No. : 11 U.S. 208

Appellant : Sheehy

Respondent : Mandeville

Judgement :

Sheehy v. Mandeville - 11 U.S. 208 (1812)
U.S. Supreme Court Sheehy v. Mandeville, 11 U.S. 208 (1812)

Sheehy v. Mandeville

11 U.S. 208

ERROR TO THE CIRCUIT COURT FOR THE

DISTRICT OF COLUMBIA SITTING AT ALEXANDRIA

SYLLABUS

A note payable at sixty days cannot be given in evidence to support a count upon a note which count does not state when the note was payable. The variance is fatal.

Upon executing a writ of inquiry in Virginia in an action of assumpsit upon a promissory note, it is necessary to produce a note corresponding with that stated in the declaration, but it is not necessary to prove the note.

The plaintiff cannot give evidence that the variance was the effect of mistake or inadvertence of the attorney and that the note produced was that which was intended to be described in the declaration.

This cause having been sent back to the circuit court by the mandate of this Court at February term 1810, 10 U. S. 10 U.S. 253, commanding that court to render judgment for the plaintiff on his first count and to award a writ of inquiry of damages, upon executing that writ of inquiry, the plaintiff produced the following note.

"Alexandria 17 July, 1804"

"Sixty days after date, I promise to pay to Mr. James Sheehy, or order, six hundred and four dollars and ninety one cents, for value received, negotiable in the Bank of Alexandria."

"R. B. JAMESON"

The note was thus described in the declaration,

"And whereas the said defendants under the name, firm, and style aforesaid, did on 17 July, 1804, make their certain note in writing called a promissory

Page 11 U. S. 209

note, subscribed by them under the name, style, title and firm of Robert B. Jameson, 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 virtue of the law in such cases made and provided, the said defendants became liable to pay to the said plaintiff the said sum contained in the said note according to the tenor and

effect of said note, and being so liable. . . ."

Which note the court below refused to suffer the plaintiff to read in evidence to the jury because it varied from that set forth in the declaration, to this refusal the plaintiff excepted. The plaintiff then contended before the jury that the existence, the execution, the amount, and the validity of the note set out in the declaration were determined by the judgment of the court upon the demurrer, and claimed damages to the full amount of that note without producing it. But the court, upon the motion of the defendant, instructed the jury that it was necessary for the plaintiff to produce the note or sufficiently account for its nonproduction -- otherwise the jury may and ought to presume that the note has been paid or has been passed away by the plaintiff to a third person for value received, and in such case ought to assess only nominal damages. To this instruction the plaintiff also excepted.

The plaintiff then, in order to rebut the presumption that the note mentioned in the declaration had been paid or passed away to a third person for a valuable consideration, produced and offered to show to the court and jury the record and judgment on the defendant's first and second pleas, which had been adjudged bad upon demurrer, and also the same note in the said pleas mentioned to have been the foundation of the suit and judgment set forth in the said pleas, which was a separate suit and judgment against R. B. Jameson upon the same note as the sole note of Jameson, and which judgment Mandeville had pleaded in bar to the present action, averring the note to be the same, but which

Page 11 U. S. 210

plea was by this Court adjudged bad on demurrer, and also the *fieri facias* issued against Jameson upon that judgment with the return of *nulla bona,* and also offered to prove by a competent witness that the promissory note produced to the jury, and in the said record of the suit against Jameson mentioned, is the same promissory note upon which the present declaration was founded, and the same which was intended to have been therein set out and described, and that the omission to state in the declaration the time in which the said note was originally

made payable, arose from a mere oversight of the attorney who drew the declaration, and that there was no other note ever intended to have been described in that declaration or answering the description therein contained, but the court rejected the whole of the said evidence as incompetent, to which the plaintiff also excepted.

The jury assessed the plaintiff's damages, and judgment was rendered accordingly at one cent only, whereupon he brought his writ of error.

Page 11 U. S. 216

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

This suit was instituted on a promissory note executed by the defendant and made payable to the plaintiff. After describing the note accurately, with the exception of the time when it became payable, which is altogether omitted, the declaration proceeds in the usual form to state that the defendant, being so liable, assumed to pay the sum mentioned in the note when he should be thereunto required, &c.;

To this count a special plea was filed which, on demurrer, was held insufficient. Judgment, on the demurrer, being rendered for the plaintiff, a writ of inquiry was awarded.

On executing this writ, the plaintiff produced a note payable sixty days after date and offered to prove that it was the note on which the suit was instituted and that the omission to state the day of payment in the declaration was the mistake of counsel.

The court refused to permit the note to go to the jury, and also instructed them that unless a note conforming to the declaration should be adduced or its absence accounted for, they must presume it to have been passed away or paid. The jury under these instructions

Page 11 U. S. 217

found one cent damages, for which judgment was rendered. To this judgment the plaintiff has sued out a writ of error.

The errors assigned are 1st, that the variance was not fatal; 2d, that on a writ of inquiry the production of the note was unnecessary.

Courts, being established for the purpose of administering real justice to individuals, will feel much reluctance at the necessity of deciding a cause on a slip in pleading or on the inadvertence of counsel. They can permit a cause to go off on such points only when some rule of law the observance of which is deemed essential to the general administration of justice peremptorily requires it.

One of these rules is that in all actions on special agreements or written contracts, the contract given in evidence must correspond with that stated in the declaration. The reason of this rule is too familiar to every lawyer to require that it should be repeated.

It is not necessary to recite the contract *in haec verba,* but if it be recited, the recital must be strictly accurate. If the instrument be declared on according to its legal effect, that effect must be truly stated. If there be a failure in the one respect or the other, an exception for the variance, may be taken, and the plaintiff cannot give the instrument in evidence.

The plea of *nonassumpsit* denies the contract, and an instrument, not conforming to the declaration either in words where it is recited, or according to its legal effect where the legal effect is stated, although proved to be the act of the defendant, is not the same act, and therefore does not maintain the issue on his part.

In this case, the legal effect of the promissory note is stated, and that effect on a note having no day of payment would be that it was payable immediately. This declaration goes on that idea, and avers a promise to pay when required. A note payable sixty days after date is a note different from one payable immediately,

and would not support the issue had *nonassumpsit* been pleaded and issue joined on this plea.

Now what difference is produced by the default of the defendant? He confesses the note stated in the declaration, but he confesses no other note. The necessity then of showing a note conforming to the declaration is precisely as strong on executing a writ of inquiry, as on trying the issue. No reason is perceived why a variance which would be fatal in the one case would not be equally fatal in the other.

The cases cited by the plaintiff's counsel have been considered, but they do not come up to this. They are not cases where the legal effect of the written instrument, offered on executing the writ of inquiry, has differed from that of the instrument stated in the declaration.

The Court is also of opinion that the production of the note, on executing the writ of inquiry, was necessary. The default dispenses with the proof of the note, but not with its production. In England, damages have in some circumstances been assessed without a jury, but it is not stated that those damages have been assessed without a view of the note. The practice of this country is to require that the note should be produced, or its absence accounted for, and the rule is a safe one.

Judgment affirmed.