

Clark's Executors Vs. Carrington

Clark's Executors Vs. Carrington

SooperKanoon Citation : sooperkanoon.com/78562

Court : US Supreme Court

Decided On : 1813

Appeal No. : 11 U.S. 308

Appellant : Clark's Executors

Respondent : Carrington

Judgement :

Clark's Executors v. Carrington - 11 U.S. 308 (1813)

U.S. Supreme Court Clark's Executors v. Carrington, 11 U.S. 7 Cranch 308 308 (1813)

Clark's Executors v. Carrington

11 U.S. (7 Cranch) 308

ERROR TO THE CIRCUIT COURT FOR

THE DISTRICT OF RHODE ISLAND

SYLLABUS

In a case of warranty and indemnity, a judgment against the person to be indemnified, if fairly obtained, especially if obtained on notice to the warrantor, is

admissible evidence in a suit against him on his contract of indemnity.

A person who, upon receiving an assignment of a share of property as security for a debt, agrees to comply with the contract of the assignor with a joint owner of the property, is bound to fulfill that contract although it exceed in amount the value of the share of the property transferred to him.

Error to the Circuit Court for the District of Rhode Island in an action of assumpsit brought by Carrington against Clark in his lifetime and prosecuted against his executors after his decease to recover from them five-ninths of the amount of a judgment recovered by Smith & Co. of Hamburgh, against Carrington upon a claim against him jointly with Greene & Barker, and J. C. Nightingale; Carrington having paid the whole.

The declaration contained the usual money counts, and several counts upon a special undertaking by Clark to comply with the contract between Greene & Barker and Carrington, which contract was averred to be to pay all debts contracted by Carrington with Smith & Co. on account of the owners of the ship *Abigail* in the proportion in which they are interested therein, the owners being Greene & Barker for five-ninths. J. C. Nightingale for two and an half-ninths, and Carrington for one and an half ninths, Clark having received from Greene & Barker, who had become insolvent, an assignment of their share in the ship and cargo and Carrington having paid over to Clark five-ninths of the proceeds thereof.

A bill of exceptions was taken to the opinion of the court below, and to the admission in evidence of a letter from Clark to Smith & Co. of 30 June, 1800, and of a letter from Greene & Barker, to Smith & Co. of 12 July, 1800, and of the writ, proceedings, and judgment in the suit of Smith & Co. against Greene & Barker, J. C. Nightingale, and Carrington.

The letter of 30 June, 1800, from Clark to Smith & Co. says

"This will be handed to you by Mr. Edward Carrington, who goes supercargo of the ship *Abigail*, of which he is a part owner in company with Messrs. Greene & Barker and John C. Nightingale.

They have concluded to send their ship on freight to your city, where, having no correspondent, I do myself the pleasure of recommending them to your notice. Mr. Carrington proposes continuing in the ship, and it is probable will require your advice and assistance in the voyage which he intends carrying into execution. I have ever found these gentlemen persons of strict integrity, and I doubt not will punctually fulfill any engagements they may enter into with you."

The letter of 12 July, 1800, from Greene & Barker to Smith & Co. is as follows:

"New York, 12 July, 1800"

"Messrs. George Smith & Co."

Gentlemen -- By the recommendation of our mutual friend, Mr. John Innes Clark, of Providence, we are induced to make an acquaintance with your house, and we have accordingly recommended Mr. Edward Carrington, supercargo of the ship *Abigail* (of which he, together with Mr. John C. Nightingale and ourselves are owners), to call on you for the necessary aid he may require while in your city. We have opened our plans of a voyage for the *Abigail* to your Mr. Adamson, which he doubts not you will readily coincide with, and render Mr. Carrington the necessary aid he may require. We shall consider ourselves responsible for all contracts which Mr. Carrington may make in the business of this ship, and anticipate the pleasure of your being well satisfied with his strict fulfillment of them. We have handed your Mr. Adamson bills of lading for a parcel of dye wood, shipped in the *Abigail* with an order to get one thousand pounds sterling insured on her cargo and freight, and shall draw on you in consequence for seven hundred and fifty pounds sterling.

"We are, your most obedient servants,"

GREENE & BARKER

"Please effect the above insurance, if not already done."

The record of the proceedings in the suit of *Smith & Co. v. Carrington* was objected to because Clark was not a party to it. But it was proved that Clark had a power of attorney from Carrington, who was in Canton and conducted the defense of that suit in his behalf.

The evidence principally relied on by the plaintiff in support of his action was a letter from Clark to him of 16 March, 1801, written at Providence. That part of the letter which relates to the subject is as follows:

"Mr. Edward Carrington,"

"DEAR SIR,"

"Since your departure from hence, our friends Messrs. Greene & Barker have been so unfortunate as to reduce them to the necessity of compromising with their creditors. In order to secure me for the endorsements I have made in their behalf, they have conveyed to me two-thirds of the ship *Abigail*, with her appurtenances also five sixths of two-thirds of the cargo. Situated as this business is, I have to recommend your making the utmost dispatch in your sales and proceeding immediately for this place, with such articles as you shall receive in return for the sales of your outward cargo, submitting the articles entirely to your judgment; but I recommend that you leave no part of the property behind you if it can possibly be avoided. With respect to the ship, notwithstanding I have a bill of sale from Greene & Barker of two-thirds, I shall view you (if you return here with her) as the owner of such proportion as agreed upon between you and them, and I give you my word that you shall receive from me every aid and support in settling the business to mutual satisfaction, that is in my power. Mr. John Corlis, who has undertaken to conduct the business for Mr. John C. Nightingale, writes you by this opportunity, and will assure you in his behalf of one-sixth of one-third from him -- that is to say, to make you an owner in the whole ship *Abigail* and appurtenances of one complete sixth, and the same proportion in the cargo, and Greene & Barker's

contract with you, shall in every respect be fully complied

Page 11 U. S. 311

with, the same as it would have been done with them, had they continued owners."

The answer of Carrington to this letter was as follows:

"Havana, April 22d 1801"

"John Innes Clark, Esq."

"SIR,"

"Triplicate your letter of 16 March was handed me this day, original and duplicate having not appeared. Your letter gives me the first advice of our friends Messrs. Greene & Barker's misfortunes by the fire, and am very sorry that they have been obliged to dispose of the *Abigail* and her cargo under their present situation of a bottomry to Messrs. Geo. Smith & Co. at Hamburg. But I presume and doubt not Messrs. Greene & Barker have acquainted you with the exact situation of them, and have only disposed to you of that part of the ship and cargo that may remain after the bottomry bond is settled and discharged."

"In consequence of the capture and detention of part of the cargo and bad condition of the ship, I have been unable to return direct to Hamburg, and obliged to make up a voyage for Providence, and have advised Messrs. Greene & Barker with particulars and desired them to cause insurance to be made thereon. I shall leave here this day and join the ship and hope to be at sea in a day or two. Should the voyage meet no other further disappointment, I flatter myself that after settling the accounts of the adventure, it will turn to some advantage and leave a considerable balance due Messrs. G. and B. and beg to assure you that everything that is consistent and within my duty in this business I shall give the strictest attention and consult you therein."

"I am, with esteem and respect,"

"Your obedient servant,"

"EDW. CARRINGTON"

Carrington, while at Hamburg in order to procure a cargo for the ship, had obtained credit with Smith

Page 11 U. S. 312

and Co. to a large amount upon the hypothecation of the ship by a bottomry bond, and upon agreeing to return to Hamburg with a cargo, for which purpose he engaged Smith & Co. to procure insurance to be made in a large sum upon his return voyage. The premium on this insurance constituted a considerable part of the debt due to Smith & Co. upon which they recovered judgment against Carrington as before stated. One of the grounds of defense taken by Clark's executors was that Carrington had neglected to give notice to Smith & Co. of the dereliction of the return voyage in due time to save that premium of insurance, and therefore he alone ought to suffer by it. The judge, in the court below, in charging the jury (as the manner is in Rhode Island), said

"Great blame is attempted to be thrown on Mr. Carrington for not giving notice to George Smith & Co. that he had changed his voyage so as to prevent the insurance being made from Havana to Hamburg, and the defendants say that for his neglect in not giving such timely notice, he ought alone to pay the whole of that premium -- of this you will judge."

The judge also said

"I conceive the case to be clear that as Greene & Barker were interested five-ninths in the voyage, they were bound to indemnify Mr. Carrington in the same proportion for the damage he should sustain by the contract with George Smith & Co."

And again he says

"If Mr. Clark received from Mr. Carrington more than five-ninths of the surplus after paying the company's debts, and Mr. Carrington has since been obliged to pay those debts, Mr. Clark is bound to refund his proportion."

The judge finally concludes his charge in this manner:

"Having gone through the case at great length and conceiving it on the whole to rest principally on questions of law, I will give you my opinion explicitly upon them, so that if your verdict should be against the defendants, they may have an opportunity to bring the cause before the supreme court."

"I conceive that Mr. Clark's letter bearing date March 16, 1801, at Providence, and directed to Mr. Carrington at Havana and received by him 22

Page 11 U. S. 313

April, 1801, taken in connection with the other evidence in the case, ought to be considered as a letter of guarantee, and binding Mr. Clark to pay five ninth parts of the debt due to George Smith & Co. as ascertained by the judgment in their favor against Mr. Carrington."

"I am also of opinion that Mr. Clark, having received of Mr. Carrington a large sum of money under and by virtue of the assignment from Greene & Barker of their interest in the ship *Abigail* and cargo, was bound, under the circumstances of this case as made out and established by the evidence, to refund the same or so much thereof as would amount to five ninth parts of the debt due to George Smith & Co. What sum Mr. Clark received is a question of fact proper for you to decide."

The verdict and judgment being against the defendants, they sued out their writ of error.

Page 11 U. S. 320

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

This cause comes on now to be heard 1st, on exceptions to the opinion of the circuit court permitting certain exhibits produced by the defendants in error, to go to the jury; 2d, on exceptions to the charge delivered by the judge, to the jury.

Page 11 U. S. 321

The first exhibit to which the plaintiffs in error objected was a letter written by their testator to George Smith & Co. of Hamburg, which respects the transaction on which the present suit is founded. This letter is said to be irrelevant.

The second is a letter written by Greene & Barker (whose interest the testator of the plaintiffs held as assignee) to George Smith & Co. making themselves responsible for the contract of Carrington.

This letter is said to be inadmissible because it is between other parties and relates to a contract between Carrington and George Smith & Co.

The third is a judgment obtained by George Smith & Co. against Edward Carrington, the defendant in error, on his transactions as a co-partner with Greene & Barker, which were guaranteed by them. The objection to this exhibit also is that it is the record of proceedings in a suit between other parties.

The Court is unanimous and clear in the opinion that neither of these exceptions is sustained.

The letter of John J. Clarke to George Smith & Co. is admissible, because it is part of the correspondence relative to the transactions out of which the present suit has grown and because it affords a strong implication that the writer was acquainted with the obligation of Greene & Barker, whose interest he claims, to comply with the engagements of Carrington, their co-partner and supercargo. It cannot, therefore, be deemed irrelevant.

The letter of Greene & Barker to George Smith & Co. is admissible because it tends to show the obligation of Greene & Barker (whose interest in the *Abigail* and her cargo is claimed by John Innes Clarke) to perform the engagements of

Carrington, and is a proper link in that chain of testimony which was adduced to prove that those engagements passed, with the interest of Greene & Barker in the *Abigail* and her cargo, to John Innes Clarke.

Page 11 U. S. 322

The judgment obtained by George Smith & Co. was admissible because it was founded on the contracts of Carrington with George Smith & Co., for which Greene & Barker were liable. It was a material document to ascertain the amount to which George Smith & Co. were entitled, as against Carrington, and was therefore a part of the testimony which would be required to show for how much Greene & Barker were responsible when they assigned to John Innes Clarke. It was certainly admissible for these purposes, because Greene & Barker were in truth co-partners with Carrington, and because, if they were not, it is a case of warranty and indemnity, and in such case a judgment against the person to be indemnified, if fairly obtained, especially if obtained on notice to the warrantor, is admissible in a suit against him on his contract of indemnity. Whether it was admissible against John Innes Clarke depends on the degree of his liability for the money for which that judgment was rendered. If the obligation to indemnify passed to him with the interest of Greene & Barker, either on his express undertaking contained in his letter of March 1801 or in consequence of any equitable lien on the vessel and cargo or on the money produced by them which attached while the property of Greene & Barker, and was not affected by the assignment, then these proceedings were admissible in a suit against him.

If no such liability existed, then the action could not be sustained, and the judgment would be reversed on the charge of the judge. This point therefore will be considered in that part of the case.

In his charge, after summing up the testimony offered by both parties, the judge proceeds to say

"I conceive that Mr. Clarke's letter bearing date March 16, 1801, at Providence and directed to Mr. Carrington at Havana and received by him 22 April, 1801, taken in

connection with the other evidence in the case, ought to be considered as a letter of guarantee, and binding Mr. Clarke to pay 5/9th parts of the debt due to George Smith & Co. as ascertained by the judgment in their favor against Mr. Carrington. I am also of opinion that Mr. Clarke, having received of Mr. Carrington a large sum of money under and by virtue of the assignment from Greene & Barker of their interest

Page 11 U. S. 323

in the ship *Abigail* and cargo, was bound under the circumstances of this case as made out and established by the evidence to refund the same or so much thereof as would amount to 5/9th parts of the debt due to George Smith & Co. What sum Mr. Clarke received is a question of fact proper for you to decide."

The declaration in this cause contains five general counts and three special counts founded on the letter of March 16, 1801, which the judge considered as a letter of guarantee binding John Innes Clarke to pay 5/9th parts of the debt due to George Smith & Co.

The first part of the charge is supposed by a part of the court to apply to the special counts and to determine the right of the plaintiff below to recover under them, the latter part of the charge to the general counts and to determine his right to recover under them.

If the letter of 16 March, 1801, bound John Innes Clarke to perform the contract of Greene & Barker, then he was liable to the extent of Greene & Barker's liability, and was bound to pay whatever they were bound to pay, although it might exceed the proceeds of the *Abigail* and cargo.

If that letter did not support the special counts, if with the other circumstances of the case it did not amount to such a contract as was stated in the declaration, then Carrington could only recover on his general counts, and could obtain a judgment for no more than had been received by Clarke.

Others of the Court are of opinion that the charge does not import that in any state of the accounts Clarke was bound to pay more than he had received.

A decision of this point is rendered unnecessary by the opinion of the Court on the letter of 16 March, 1801.

The important part of that letter is in these words.

"With respect to the ship, notwithstanding I have a bill of sale from Greene & Barker of two-thirds, I

Page 11 U. S. 324

shall view you (if you return here with her) as the owner of such proportion as agreed upon between you and them, and I give you my word that you shall receive from me any aid and support in settling the business to mutual satisfaction, that is in my power. Mr. John Corlis, who has undertaken to conduct the business for Mr. John C. Nightingale, writes you by this opportunity, and will assure you in his behalf of one-sixth of one-third from him -- that is to say, to make you an owner in the whole ship *Abigail*, and appurtenances of one complete sixth, and the same proportion in the cargo, and Greene & Barker's contract with you shall in every respect be fully complied with, the same as it would have been done with them, had they continued owners."

What was Greene & Barker's contract with Carrington?

It is observable that neither in this letter nor in any other part of the proceedings is there any evidence that Greene & Barker had made with Carrington more than one contract respecting this voyage.

A part of this contract, as is apparent from the letter of Mr. Clarke, entitled Carrington to one sixth part of the *Abigail* and of the cargo to be taken on board at Hamburg. The letter of 12 July, 1800, addressed by Greene & Barker to George Smith & Co., states Carrington to be a part owner of the vessel which was sent to Hamburg on freight, wishes them to render Carrington the necessary aid he may require, and adds

"we shall consider ourselves responsible for all contracts Mr. Carrington may make in the business of this ship, and anticipate the pleasure of your being well satisfied with his strict fulfillment of them."

It seems a necessary inference from the condition and object of the parties that this letter was written in pursuance of and conformity with the contract between Greene & Barker and Carrington, and that their responsibility, "for all contracts Mr. Carrington might make in the business of the ship" was as much a part of their engagement with him as the agreement that he should be interested one-sixth in the vessel and cargo.

Page 11 U. S. 325

This undertaking was known to Mr. Clarke. His letter of 30 June, 1800, introducing Carrington to George Smith & Co. recommends Greene & Barker and Nightingale as the persons on whom G. Smith & Co. were to rely for the fulfillment of the engagements made by Carrington. "I have ever found these gentlemen," says he, "persons of strict integrity, and I doubt not will punctually fulfill any engagements they may enter into with you." Clarke knew then that Greene & Barker had bound themselves to be responsible for the contracts of Carrington with George Smith & Co., and alluded to this residue of their contract with Carrington when, after saying that he should consider Carrington as the owner of such proportion of the ship as was agreed on between him and them and that Mr. Corlis, who represented Nightingale, would do the same, he adds "and Greene & Barker's contract with you shall in every respect be complied with."

The subsequent conduct of Clarke certainly proves that he never understood himself to be entitled to more, by the assignment of the *Abigail* and her cargo, than would remain after discharging the contracts entered into by Carrington.

The record abounds with proofs of this position, which have been much pressed at the bar, of which the Court will select only one. It is the letter from Carrington to Clarke, dated Havana, April 22, 1801, in which he acknowledges the receipt of Clarke's letter of 16 March of the same year. He states the lien upon the ship and

cargo and adds,

"but I presume and doubt not Messrs. Greene & Barker have acquainted you with the exact situation of them, and have only disposed to you that part of the ship and cargo that may remain after the bottomry bond is settled and discharged."

At this information Mr. Clarke expresses no surprise, nor does he manifest any dissatisfaction at the conclusion Carrington had drawn respecting the terms on which he had succeeded to the rights of Greene & Barker. This is considered as further explaining his meaning in using the terms "and Greene & Barker's contract with you shall in every respect be complied with."

Page 11 U. S. 326

Upon these grounds it is the opinion of the majority of the Court that the letter of 16 March, 1801, contains a contract, binding John Innes Clarke to perform the whole contract of Greene & Barker with Carrington, a part of which was to pay five ninth parts of the debt contracted on account of the *Abigail* and her cargo, with George Smith & Co; consequently the plaintiffs in error were responsible to Carrington as far as Greene & Barker were responsible.

It has been contended, for the plaintiffs in error, that a considerable part of the debt to George Smith & Co. (the premium of insurance on a return voyage to Hamburg) was incurred in consequence of the gross negligence of Carrington in not countermanding the order for insurance as soon as he determined to change the voyage. For this sum, it is contended, Greene & Barker could not have been liable to Carrington, and consequently it cannot be recovered from John Innes Clarke.

One of the judges is of opinion, that the question of negligence is, in this case, a point of law, Carrington having been a co-partner with Greene & Barker, and therefore proper for the decision of the court; others think that the judge has left that question with the jury.

In summing up the evidence, the judge says

"the defendants say, that for his [Carrington's] neglect in not giving such timely notice [of the change of the voyage], he ought himself to pay the whole of the premium. Of this you will judge."

This explicit declaration is considered as not being overruled by the concluding part of the charge.

If the fact of negligence was left to the jury, it has decided it in the negative, and the question whether a partner would in such a case be responsible to his co-partners for negligence in failing to countermand an order for insurance does not arise in the cause.

On that part of the charge which states John Innes Clarke to be responsible to Carrington to the amount of the money he had received, there is no difference of

Page 11 U. S. 327

opinion in the Court. It is however, unnecessary to state the reasoning on which this opinion is founded, since the construction given to the letter of 16 March, 1801, decides the cause.

It is the opinion of the Court that there is no error and that the judgment be

Affirmed.