Hughes Vs. Blake

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Court : US Supreme Court

Decided On : 1821

Appeal No. : 19 U.S. 453

Appellant : Hughes

Respondent : Blake

Judgement :

Hughes v. Blake - 19 U.S. 453 (1821)
U.S. Supreme Court Hughes v. Blake, 19 U.S. 6 Wheat. 453 453 (1821)

Hughes v. Blake

19 U.S. (6 Wheat.) 453

APPEAL FROM THE CIRCUIT

COURT OF MASSACHUSETTS

SYLLABUS

No decree can be made on the testimony of a single witness unaccompanied by corroborating circumstances against a positive denial by the defendant of any matter directly charged by the bill, in the defendant's answer, or answer in support

of his plea.

A replication to a plea is an admission of the sufficiency of the plea, as much as if it had been set down for argument and allowed, and all that the defendant has to do is to prove it in point of fact, and a dismission of the bill on the hearing is then a matter of course.

Under what circumstances a plea of a former judgment at law for the cause of action is a good bar in equity.

The object of the bill in equity filed in this case was to recover from the defendant Blake a sum of money arising from the sale of a tract of land, called Yazoo lands, alleged to have been made in 1795 by the defendant as agent of certain persons named in the bill, in which lands the plaintiff, Hughes, claimed an equitable interest in common with the immediate principals of the defendants, and therefore to be entitled to a proportion of the proceeds resulting from the sale. The bill also charged that the defendant had rendered himself distinctly liable for a specific sum of money in virtue of a certain order having reference to the plaintiff's interest in the lands, drawn by one Gibson in September, 1796, in favor of the plaintiff and accepted by the defendant, with certain modifications and conditions, as particularly expressed in the acceptance.

Page 19 U. S. 454

The defendant pleaded in bar both to the relief and the discovery sought by the bill, a former verdict and judgment at law rendered in his favor in the Supreme Court of Massachusetts in the year 1810 upon a suit commenced against him by the present plaintiffs in 1804, being long before the exhibition of the present bill, for the same cause of action. The plea averred that the judgment at law was still in force, that the matters in controversy, and the parties in both suits, were the same, that the whole merits of the case, as stated by the bill, were fully heard, tried, and determined in the action at law and in a court of competent jurisdiction, and that the judgment was obtained fairly and without fraud, covin, or misrepresentation or the taking any undue advantage. It was also averred by the plea that no evidence

has come to the plaintiff's knowledge since the trial at law respecting any of the facts alleged in the bill, and which he did not or might not have produced on such trial, and further that the defendant has at no time, as alleged in the bill, obtained of a certain E. Williams any allowance or payment for or on account of his, the defendant's, being liable as bail for Gibson in the plaintiff's bill mentioned, and for which liability he has claimed in the action at law an indemnity out of a fund on the credit of which he had accepted the order in favor of the plaintiff. The defendant, then, without waiving his plea, proceeded to answer and deny the matters alleged by the bill as circumstances of equity to avoid the effect of the proceedings at law, and which he had already denied by the averment in his plea.

Page 19 U. S. 455

To this plea and answer the plaintiff filed a general replication in the usual form, and witnesses were examined by both parties.

At the hearing, the identity of the causes of action were sought to be established without the aid of collateral proof from a comparison of the matters set forth in the bill with the averments contained in the several counts of the plaintiff's declaration, it appearing moreover that in the trial at law, the plaintiff had submitted to the jury in support of these counts the depositions of the same witnesses on whose evidence he relied in support of his bill. The principal other question of fact related to the subject of the negotiation respecting the lands before mentioned, alleged in the plaintiff's bill to have taken place in 1814 between the defendant and E. Williams, whose testimony respecting it was insisted by the plaintiff not to be sufficient to outweigh the effect of the positive denials contained in his plea and answer.

The cause being heard on the issue joined and the proofs taken in it, the court below decreed that the plea was sufficiently proved, and therefore dismissed the bill with costs, and the cause was brought by appeal to this Court.

Page 19 U. S. 468

MR. JUSTICE LIVINGSTON delivered the opinion of the Court, and after stating the pleadings, proceeded as follows:

In examining whether there be any error in the decree of the court below, we shall have to inquire whether the plea of the respondent is proved, and if so whether any other decree except that of dismissing the bill could have been made by the court below.

In examining the question of fact, that is whether the plea were proved or not, it will be borne in mind that no decree can be made against a positive denial of the defendant of any matter directly charged in the bill on the testimony of a single witness unaccompanied by some corroborating circumstance.

Page 19 U. S. 469

There is no pretense that there is anything untrue in any of the averments which the plea contains on the subject of the proceedings at law -- such as that a judgment was obtained by the respondent -- that the same is in full force, &c.; The first averment in the plea which will require a more particular consideration is the one denying that the respondent had at any time obtained from E. Williams any allowance or payment for or on account of his being bail for Gibson in an action brought against him by one Evans. The respondent had been permitted, as appears by the facts of the case, to retain out of a fund on which the appellant had a claim a considerable sum to save him harmless against this responsibility, and which was in all probability allowed to him on the trial at law. If, therefore, it could have been shown that Blake had been fully indemnified or paid for this liability from any other quarter, and that this fact had come to the appellant's knowledge since the judgment at law, it would seem no more than equitable, notwithstanding these proceedings, thus far to open the account between them. But has this been done? The allegation of the bill in substance is that Blake has been twice indemnified for the same loss, or in other words that he had been twice reimbursed the monies which he paid as the bail of Gibson.

This fraud which is so unhesitatingly charged upon the respondent is not made out by any testimony in the cause. Independent of Blake's positive and absolute denial, which is equivalent to the testimony of one witness, there is nothing in the deposition of Williams, who is the only

Page 19 U. S. 470

witness to this point, to establish the fact as stated in the bill. This gentleman has been twice examined, once in the year 1805 as a witness in the trial at law and again as a witness in this cause. On his first examination he stated that he was informed by Blake that he held in his hand about $6,300 which had been received of Henry Newman as an indemnity for his having become bail for Gibson in an action by some person whose name he did not recollect, on which pretense Blake refused to pay him this sum. In his second deposition, which was taken in this cause, he swears that he was informed by Blake that he had received from Newman about $6,000, which he should retain in consequence of his liability to Evans as the bail of Gibson, and that he, Williams, allowed the respondent to apply this money for that purpose. Now admitting that Blake retained these monies, and with the consent of Williams, who, it appears however, had no interest in or control over them, with intent to apply them in this way, where is there any proof whatever in contradiction of Blake's answer that he ever did make that use of them? He might have securities of Gibson of various kinds, the avails of which he might have a right to retain for the same object, but if he actually made only one appropriation for such object, no one could complain. That the fund spoken of by Williams which arose out of Newman's note was not applied to the indemnity which has so often been mentioned, appears not only by an averment in Blake's plea to that effect, but by the testimony of Gibson

Page 19 U. S. 471

himself, a witness of the appellant, who declares that the note of Newman was subject to his order, that no privity existed between Williams and Blake respecting the same, and that it had not been placed in Blake's hands as an indemnity for becoming his bail. It follows therefore that Blake could not have obtained from

Williams any allowance or payment on account of this responsibility, and we accordingly find from the bill itself that on a settlement which took place between Blake and Gibson in November, 1796, about two months after the acceptance in favor of the appellant, the former fell in debt to the latter a sum exceeding $2,000, the payment of which by Blake is one subject of complaint in the appellant's bill.

Now it is more than probable, that in this settlement, Gibson received a credit for the very money of which Williams speaks, as Gibson acknowledges it to have been a final settlement of all the accounts between him and Blake. The Court therefore is entirely satisfied that the averment in the respondent's plea which it has just been considering is fully established and that the proof is such as to leave no room whatever to believe that Blake was ever repaid the moneys he advanced as the bail of Gibson from any other fund than that which the appellant had consented should stand pledged for that purpose. As little truth is there in the allegation that what Williams could testify on this subject was unknown to Hughes during the pendency of the action at law, for Williams, who is examined as a witness for the

Page 19 U. S. 472

plaintiff in this suit, swears to the very fact which he had been produced to prove in the action at law respecting the declarations of Blake concerning Newman's note, and this he does without any variation from his former testimony materially affecting the present suit. The other averment, therefore, in the plea that no new evidence has come to the appellant's knowledge respecting the matters in litigation is fully and satisfactorily established.

The truth of the plea being thus made out, what is to be the consequence? If the rule of courts of equity in England is to be applied, there can be no doubt. If a plea in the apprehension of the complainant be good in matter but not true in fact, he may reply to it as has been done here, and proceed to examine witnesses in the same way as in case of a replication to an answer, but such a proceeding is always an admission of the sufficiency of the plea itself, as much so as if it had been set down for argument and allowed, and if the facts relied on by the plea are

proved, a dismission of the bill on the hearing is a matter of course. Whatever objection there may be to adhering strictly to this course of proceeding in every description of cases, it is considered as the long and established practice of a court of equity which ought not lightly to be departed from. It is not perceived that any serious mischief can arise from it. Counsel will generally be able to decide on the merits of any defense which may be spread on a plea, and if insufficient, it is not probable they will do otherwise than set it down for argument.

Page 19 U. S. 473

Nor will they ever take issue on it but in a case which presents a very clear and sufficient defense if the facts be proved. If a replication should be filed inadvertently, the court would have no difficulty in permitting it to be withdrawn. But if the plaintiff will persevere in putting the defendant to the trouble and expense of proving his plea, it must be from an entire conviction that it contains a substantial defense, and in such case there is no hardship in a court's considering it in the same light.

But without applying the rule which has been mentioned to the present case, the Court has no difficulty in saying that the matters set forth in this plea, which has been drawn with great care and judgment, constitute a complete defense to the present action and that the appellant has failed in showing any good cause why the judgment at law should not be conclusive on all the matters stated in the bill. Whatever claim he may at one time have had on Blake for one-fourth of $75,000, secured by Barrel's notes, if Blake knew at the time of taking them of his interest to that extent, or for not taking a note for that amount in the name of Hughes himself, it is very certain that with a full knowledge on his part that Blake utterly denied a liability to account with anyone but Gibson, he came to a settlement with him by allowing him to accept of Gibson's draft in his favor in such way as to charge the fund on which it was drawn with so many deductions as entirely to exhaust it. And when he is apprised of this conditional acceptance by his agent or the person who

Page 19 U. S. 474

presented the draft instead of returning it or making any complaint, he acquiesces in it for seven or eight years, and then brings an action to enforce this very contract of acceptance, which he must have known put it in the power of the acceptor to make all the deductions from the fund in his hands, which were designated in the act of acceptance. After six years' litigation in a court of law, it is now attempted to revive the same controversy, at least in part, on an allegation that Blake received a compensation in some other way than out of the fund on which the bill in his favor was drawn for one of the liabilities mentioned in the acceptance. That this was not the case is abundantly proved. But if Blake had other funds of Gibson besides the note of Barrel, which he also considered as under Gibson's exclusive control, out of which his indemnity as bail might have been obtained, what right has Hughes now to complain that such other funds were not applied in that way after he had agreed or consented that this indemnity should come out of those funds of Gibson in the hands of Blake, out of which he was to be paid. Having come into the arrangement, Blake might well think himself at liberty, as it seems he did, to apply the other funds of Gibson in any other way which he and Gibson might think proper. Whether Gibson be liable to the appellant for the subtraction of any part of his fund for the payment of his debt is a question not before the Court, but we cannot see that an application of them in express conformity with the agreement of

Page 19 U. S. 475

the parties to this suit can give the appellant any claim on the respondent. At any rate, the plea having denied all the allegations which were relied on as grounds for removing the bar which it was anticipated would be interposed to the appellant's bill, and all the matters stated in the plea on which issue was taken, having been fully proved, the Court is of opinion that the decree of the circuit court must be affirmed with costs.

Decree affirmed. 1 Mason 515.