

Tayloe Vs. Sandiford

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Court : US Supreme Court

Decided On : 1822

Appeal No. : 20 U.S. 13

Appellant : Tayloe

Respondent : Sandiford

Judgement :

Tayloe v. Sandiford - 20 U.S. 13 (1822)

U.S. Supreme Court Tayloe v. Sandiford, 20 U.S. 7 Wheat. 13 13 (1822)

Tayloe v. Sandiford

20 U.S. (7 Wheat.) 13

ERROR TO THE CIRCUIT COUNTY

OF THE COUNTY OF ALEXANDRIA

SYLLABUS

In general, a sum of money in gross to be paid for the nonperformance of an agreement is considered as a penalty, and not as liquidated damages.

A fortiori when it is expressly reserved as a penalty.

Thus where, in a building contract, the following covenant was contained, "the said houses to be completely finished on or before 24 December next, under a penalty of one thousand dollars in case of failure," it was held that this was not intended as liquidated damages for the breach of that single covenant only, but applied to all the covenants made by the same party in that agreement; that it was in the nature of a penalty, and could not be set off in an action brought by the party to recover the price of the work.

An agreement to perform certain work within a limited time under a certain penalty is not to be construed as liquidating the damages which the party is to pay for the breach of his covenant.

A person owing money under distinct contracts has a right to apply his payments to whichever debt he may choose, and this power may be exercised without any express directions given at the time.

A direction may be evidenced by circumstances as well as by words, and a positive refusal to pay one debt and an acknowledgement of another with a delivery of the sum due upon it would be such a circumstance.

Page 20 U. S. 14

MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

This is a writ of error to a judgment of the Circuit Court of the County of Alexandria, rendered in an action of assumpsit, brought by T. & S. Sandiford against John Tayloe. It appeared on the trial of the cause that on 13 May, 1816, the parties entered into a written contract by

Page 20 U. S. 15

which the defendants in error undertook to build for the plaintiff three houses on the Pennsylvania avenue in the City of Washington. On the 18th day of the same

month, the parties entered into a contract under seal for the building of three additional houses at a stipulated price. This contract contains the following covenant: "The said houses to be completely finished on or before 24 December next under a penalty of \$1,000 in case of failure."

The parties entered into a third verbal contract for some additional work, to be measured and paid for according to measurement.

These three houses were not completed by the day, and the plaintiff in error claimed the sum of \$1,000 as stipulated damages, and retained it out of the money due to the defendants in error. This suit was thereupon brought, and on the trial of the cause the defendant in the circuit court claimed to set off in this action \$1,000 as in the nature of stipulated damages, but the court overruled this claim and decided that the said sum of \$1,000 had been received in the nature of a penalty, and could not be set off in this action.

The defendant then moved the court to instruct the jury that

"upon the evidence offered, if believed, the plaintiffs were not entitled to recover in this action the said sum of \$1,000 inasmuch as the same, if due at all, was due under a contract under seal, and that the declarations of the defendant, and the understanding between the parties as to the reservation of the said \$1,000 given in evidence

Page 20 U. S. 16

as aforesaid, was competent and sufficient evidence of the defendants' intention to apply his payment to the extinguishment in the first instance of such parts of the said moneys as were due by simple contract, and to reserve the \$1,000 out of the money due under the said original contract."

This instruction the court refused to give, and did instruct the jury

"That it was competent to the plaintiffs to recover the said \$1,000 in this action unless they should be satisfied by the evidence that the defendant, at the time of paying the money, had expressly directed the same or a sufficient part thereof to

the payment of the \$1,500 due on the simple contract."

To both these opinions the defendant excepted, and the jury having given a verdict for the plaintiff in the circuit court, this writ of error was brought to the judgment rendered thereon.

It is contended by the plaintiff in error that the circuit court erred.

1st. In overruling the claim to offset the \$1,000 mentioned in the agreement.

2d. In declaring that the plaintiff in that court might so apply the payments made as to discharge the contract under seal and leave the sum retained by the defendant in that court to be demanded under the simple contract.

1. Is the sum of \$1,000 mentioned in the agreement of 13 May to be considered as a penalty, or as stipulated damages?

The words of the reservation are, "The said house to be completely finished on or before 24

Page 20 U. S. 17

December next, under the penalty of \$1,000, in case of failure."

In general, a sum of money in gross to be paid for the nonperformance of an agreement is considered as a penalty, the legal operation of which is to cover the damages which the party in whose favor the stipulation is made may have sustained from the breach of contract by the opposite party. It will not, of course, be considered as liquidated damages, and it will be incumbent on the party who claims them as such to show that they were so considered by the contracting parties. Much stronger is the inference in favor of its being a penalty when it is expressly reserved as one. The parties themselves denominate it a penalty, and it would require very strong evidence to authorize the court to say that their own words do not express their own intention. These writings appear to have been drawn on great deliberation, and no slight conjecture would justify the court in saying that the parties were mistaken in the import of the terms they have

employed.

The counsel for the plaintiff in error supposes that the contract furnishes clear evidence that the parties intended this sum as liquidated damages. The circumstance that it is annexed to the single covenant stipulating the time when the work shall be completed is considered as showing that it was intended to fix the damages for the breach of that covenant.

Without deciding on the weight to which this argument would be entitled if supported by the fact, the Court cannot admit that it is so supported. The engagement that the said houses shall be completely

Page 20 U. S. 18

finished on or before 24 December next is as much an engagement for the manner as for the time of finishing the work, and covers, we think, all the covenants made by the defendants in error in that agreement. The case therefore presents the single question whether an agreement to perform certain work by a limited time under a certain penalty is to be construed as liquidating the damages which the party is to pay for a breach of his covenant. This question seems to have been decided in the case of *Smith v. Dickenson*, reported in 3 Bos. & Pull. 630.

The plaintiff in error relies on the case of *Fletcher v. Dycke*, reported in 2 T.R. 32., in which an agreement was entered into to do certain work within a certain time, and if the work should not be done within the time specified, "to forfeit and pay the sum of 10. for every week" until it should be completed.

But the words "to forfeit and pay" are not so strongly indicative of a stipulation in the nature of a penalty as the word "penalty" itself, and the agreement to pay a specified sum weekly during the failure of the party to perform the work partakes much more of the character of liquidated damages than the reservation of a sum in gross.

The Court is well satisfied that this stipulation is in the nature of a penalty, and consequently that there was no error in rejecting it as a setoff in this case.

Page 20 U. S. 19

The second objection goes entirely to the form of the action. The declaration is in assumpsit, and the plaintiff contends that the money claimed was due on a sealed instrument. It is admitted that all the money for the whole work performed by the defendants in error was paid, except the sum of \$1,000, which was retained by the plaintiff in error, expressly on account of that sum which he supposed himself entitled to under the contract of 18 May, on account of the failure to complete the buildings by 24 December. If this money was due on the simple contract, then this action was clearly sustainable; if it was due under the sealed instrument, then it could be recovered only by an action on that instrument. Its being due on the one or the other depends on the application of the payments made by the plaintiff to the defendants in error. The court instructed the jury that it was competent to the plaintiff to recover the said \$1,000

Page 20 U. S. 20

in this action

"unless they should be satisfied by the evidence that the defendant, at the time of paying the money had expressly directed the same or a sufficient part thereof should be applied to the extinguishment of the \$1,500 due on the simple contract."

This instruction of the court is given in terms the correctness of which cannot be entirely admitted. It would exclude an application of the money made by the creditor himself, with the assent of the debtor to the simple contract debt, for in such case it would not appear that the debtor had "expressly directed" the application.

Thus, among the accounts exhibited at the trial is a receipt for the whole sum due for extra work performed under a verbal contract. It was not proved that the application of this money to the discharge of the verbal contract was "expressly

directed." Yet no person will say that the creditor was at liberty to controvert this application or to change it.

A person owing money under distinct contracts has undoubtedly a right to apply his payments to whichever debt he may choose, and although prudence might suggest an express direction of the application of his payments at the time of their being made, yet there may be cases in which this power would be completely exercised without any express direction given at the time. A direction may be evidenced by circumstances as well as by words. A payment may be attended by circumstances which demonstrate its application as completely as words could demonstrate it. A positive refusal to pay one

Page 20 U. S. 21

debt and an acknowledgment of another, with a delivery of the sum due upon it would, we think, be such a circumstance. The inquiry, then, in this case will be whether the payments made by the plaintiff to the defendants in error were accompanied with circumstances which amount to an exercise of his power to apply them.

A circumstance of no light import was given in evidence by the creditor himself. It was that at the time of discharging the account for the extra work, the debtor confessed

"that he had retained in his hands \$1,000 as the forfeiture under the original contract for not finishing the houses in the time stipulated by contract, and that he would hold it unless compelled by law to pay it."

This \$1,000 was the penalty stipulated in the agreement under seal, and when all the residue of the money was paid, the inference is very strong that this sum was reserved out of the money stipulated by the same agreement, and that the payments were made in discharge of the sums acknowledged to be due for other work.

The final payment was made by Tayloe through the hands of a third person. His original purpose seems to have been to insist on a receipt in full before he would pay the sum, which remained due independent of the sum in contest. But on a representation of the peculiar pressure under which the Sandifords labored, they having a note in bank which had become due, he agreed to pay the whole money due under all the contracts, except the sum of \$1,000, which he claimed a right to retain

Page 20 U. S. 22

under the stipulation of the sealed instrument. There existed no objection to the payment of the money due under the simple contract. The whole objection was to the payment of that under the sealed instrument, out of which he claimed a right to deduct \$1,000 on account of a failure in the performance of that contract. Under these circumstances, we think that the money retained must be considered as reserved out of the sum due on that contract, and that the simple contract was discharged.

The court erred, then, in this direction to the jury, and the judgment must be

Reversed and the cause remanded for a new trial.

CERTIFICATE. This cause came on to be heard on the transcript of the record of the Circuit Court for the District of Columbia in the County of Washington, and was argued by counsel. On consideration whereof it is the opinion of this Court that the said circuit court erred in instructing the jury

"that it was competent to the plaintiff to recover the said \$1,000 in this action unless it should be satisfied by the evidence that the defendant, at the time of paying the money, had expressly directed the same, or a sufficient part thereof, to be applied to the extinguishment of the \$1,500 due on simple contract."

It is therefore ADJUDGED and ORDERED that the judgment of the said circuit court in this case be and the same is hereby reversed and annulled, and it is further ORDERED that the said cause be remanded to the said circuit court with

directions to issue a *venire facias de novo*.

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