Sneed Vs. Wister

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Court : US Supreme Court

Decided On : 1823

Appeal No. : 21 U.S. 690

Appellant : Sneed

Respondent : Wister

Judgement :

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Sneed v. Wister

21 U.S. (8 Wheat.) 690

ERROR TO THE CIRCUIT

COURT OF KENTUCKY

SYLLABUS

The Act of Assembly of Kentucky, of 7 February 1812, giving interest on judgments for damages in certain cases, applies as well to cases depending in the circuit courts of the United States as to proceedings in similar cases in the state

courts.

The party is as well entitled to interest in an action on an appeal bond as if he were to proceed on the judgment if the judgment be on a contract for the payment of money. He is entitled to interest from the rendition of the original judgment.

A decree of the highest court of equity of a state affirming the decretal order of an inferior court of equity of the same state, refusing to dissolve an injunction granted on the filing of the bill, is not a final decree within the twenty-fifth section of the Judiciary Act of September 24, 1789, ch. 20, from which an appeal lies to the Supreme Court of the United States.

In general, judgments and decrees are evidence only in suits between parties and privies, but the doctrine is wholly inapplicable to a case like the present, where the decree is in equity.

Oyer is not demandable of a record, nor in an action upon a bond for performance of covenants in another deed can oyer of such deed be craved, for the defendant, and not the plaintiff, must show it with a profert of it or an excuse for the omission.

If oyer be improperly demanded, the defect is aided on a general demurrer, but it is fatal to the plea, where it is set down as a cause of demurrer.

Nil debet is an improper plea to an action of debt upon a specialty or deed where it is the foundation of the action.

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This was an action of debt, brought in the circuit court for the District of Kentucky, by the defendants in error against the plaintiffs upon a bond in the penalty of $4.000 with condition that the said A. Sneed should prosecute with effect his appeal from a judgment of the Franklin Circuit Court, pronounced in a suit wherein the said Wister and others were plaintiffs, and the said A. Sneed was defendant, and should well and truly pay to the said obligees all such damages and costs as should be awarded against him, in case the said judgment should be affirmed in

whole or in part, or the appeal should be dismissed or discontinued.

The averments in the declaration are that the said A. Sneed did not prosecute his said appeal with effect, but that afterwards, at a certain term of the court of appeals, the said judgment was affirmed and judgment rendered in favor of the said plaintiffs against the said defendant, A. Sneed, for damages at the rate of ten percent on the amount of the said judgment, to-wit, on the sum of $1,895.13 1/2, as by the records of the said court of appeals would

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appear. And further that the said judgment, rendered by the said Franklin Circuit Court, was for $1,895.13 1/2 damages, and $____ costs, as would appear by the records of the said court. The declaration then avers that the said A. Sneed hath not paid to the said plaintiffs the said damages and costs aforesaid, or either of them, whereby action accrued.

To this declaration the defendants, after demanding oyer of the bond and condition thereof in the declaration mentioned, and also of the judgment of the court of appeals, therein proffered, pleads in bar of the action:

1. That by the judgment and mandate of the said court of appeals, the said cause was remanded to the Circuit Court of Franklin, where the judgment of the said court of appeals, according to the mandate, was entered up as the judgment of the said court of Franklin, and that after the said judgment was so entered, *viz.,* on 19 August, 1820, in the clerk's office of the said court, the said A. Sneed, according to the laws of Kentucky, did replevy the said sum in the declaration mentioned by acknowledging recognizances, called replevin bonds, before the said clerk, together with Landon Sneed his surety in said recognizances for the said sums of money, damages and costs, in the declaration mentioned, to be paid in one year from the date thereof; the said clerk having lawful authority to take said replevin bonds, having by law the force of judgments, and then remaining in the said court in full force, not quashed, &c.;

2. The second plea is *nil debet.*

To these pleas the plaintiffs demurred, and assigned for cause of demurrer, to the first that it contains a prayer of oyer of records, of which profert was not made, and of which the defendants had no right to oyer, and further that the said plea is defective in not setting forth where the replevin bond pleaded was executed, that the court might judge whether there was any authority to take it.

The demurrers being joined, the court below gave judgment in favor of the plaintiffs and awarded a writ of inquiry to assess the damages to which they were entitled. On this inquiry, the defendants' counsel moved the court to instruct the jury 1. that the damages of 10 percent on affirmance cannot be given, because not within the breaches assigned; and 2. that they ought not to allow interest on the damages in the original judgment for any period before affirmance.

These instructions the court refused to give, but did, upon the motion of the counsel for the plaintiffs, instruct the jury that the Act of Assembly of Kentucky of 7 February, 1812, "giving interest on judgments for damages in certain cases," applies to cases depending in this Court in actions on appeal bonds, as much as to proceedings in similar cases in the state courts. That the party is as well entitled to interest in an action on the appeal bond as if he were to proceed on the judgment at law, and that, by law, the plaintiff is entitled to interest on the amount of his judgment from the time it was rendered in the Franklin circuit court.

Judgment being rendered in favor of the plaintiffs below for the damages assessed by the jury, a writ of error was sued out by the defendants and the cause brought before this Court for revision.

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

Whether the replevin bond entered into by A. Sneed in the clerk's office of the Franklin Circuit Court could be pleaded in bar of the action on the appeal bond is a question which this Court would feel no hesitation in deciding could we have succeeded in our efforts to obtain the act or acts of the Kentucky legislature which authorized the giving such bonds. The same reason prevents this Court from giving an opinion as to the alleged insufficiency of the first plea in not setting forth where the replevin bond so pleaded was executed, that the Court might judge whether there was any authority for taking the same. If the cause turned exclusively upon those points, we should deem a continuance of it proper until the counsel could have an opportunity of furnishing the Court with those laws. This, we think, is not the case, being all of opinion that for the other cause of demurrer

assigned to the first plea, the judgment of the court below upon that plea was correct. In this case, no profert was made in the declaration of the records therein mentioned, nor would it have been proper to do so. And even if a profert be unnecessarily or improperly made, still the defendant is not entitled to demand oyer of the instrument, but is bound to plead without it. We take the law to be that oyer is not demandable of a record, nor in an action upon a bond for performance of covenants in another deed can oyer of such deed be craved, but the defendant, and not the plaintiff, must show it or the counterpart with a profert of it or an excuse for the omission. If oyer be improperly demanded and the instrument be stated upon it, although the defect in the plea would be aided on a general demurrer, it is nevertheless fatal to the plea where it is set forth as a cause of demurrer. The whole of this doctrine is laid down in 1 Chitty's Plead. 302, third Am. ed.

As to the plea of *nil debet,* to which there is a demurrer, it is clearly bad, no principle of law being better settled than that this is an improper plea to an action of debt upon a specialty or deed, where it is the foundation of the action.

This brings the Court to the consideration of the instructions given to the jury upon the application of the plaintiffs' counsel, and we are of opinion that the act referred

to was strictly applicable to this case, in like manner as it would have been had this action been brought in a state court, and that, according to the clear expressions

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of that act, the plaintiffs were entitled to legal interest on the damages recovered in the Franklin Circuit Court from the time of the rendition of that judgment, since it fully appeared by the record of the court of appeals that the judgment of the Franklin Circuit Court was rendered on a contract to pay money. The act declares in substance that every judgment rendered after the passage of the act, founded upon contract sealed or unsealed, expressed or implied, for the payment of money, &c.;, which should be delayed in the execution, by proceedings on the part of the defendant, by injunction, writ of error, &c.;, with a supersedeas, or an appeal to the court of appeals, should, in the event of the judgment's being affirmed, bear legal interest from the rendition of the judgment, &c.; The last part of the section, which declares it to be the duty of the clerk of the court in which the judgment was rendered, to endorse on the execution, that the same is to bear legal interest until paid, is strictly applicable to the remedy, and not to the right. The latter is given by the preceding parts of the act, but it can only be enforced where the plaintiff proceeds by execution, by virtue of the endorsement on that process, which it is the duty of the clerk to make.

The Court is also of opinion that the court below was right in refusing to give the first instruction asked for by the defendants' counsel, inasmuch as the breaches assigned do, in our apprehension, manifestly embrace the 10 percent

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damages given upon affirmance by the court of appeals. And if the above opinion in respect to the interest to which the plaintiff was entitled be correct, it follows that the court below was right in refusing to give the second instruction asked for by the defendants' counsel.

Judgment affirmed with costs.