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Wetzell Vs. Bussard

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Court : US Supreme Court

Decided On : 1826

Appeal No. : 24 U.S. 309

Appellant : Wetzell

Respondent : Bussard

Judgement :

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Wetzell v. Bussard

24 U.S. (11 Wheat.) 309

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLUMBIA AND COUNTY OF WASHINGTON

SYLLABUS

An acknowledgement of a debt which will take a case out of the statute of limitations must be unqualified and unconditional.

If it be connected with circumstances which in any manner affect the claim, or if it be conditional, it may amount to a new assumpsit for which the old debt is a sufficient consideration, or if it be construed to revive the original debt, that revival is conditional, and the performance of the condition or a readiness to perform it must be shown.

Thus, where an action was brought on a promise in writing to deliver a quantity of powder, and the original assumpsit being satisfactorily proved, the defendant relied upon the statute of limitations, and one witness deposed that the defendant told him that the plaintiff need not have sued him, for if he had come forward and settled certain claims which defendant had against him, the defendant would have given him his powder; to another witness defendant said, that he should be ready to deliver the powder whenever the plaintiff settled the suit which Dr. E. had brought against him &c.; *Held* that those declarations did not amount to an unqualified and unconditional acknowledgement of the debt, but that the plaintiff ought to have proved a performance or a readiness to perform the condition on which the new promise was made.

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

This was an action of assumpsit brought by the plaintiff in the Circuit Court of the United States for the District of Columbia and County of Washington on a promise in writing to deliver a quantity of powder. The defendant pleaded the general issue and the statute of limitations. The original assumpsit having been satisfactorily proved, the plaintiff, to support the second issue, introduced a witness who swore that the defendant, in a conversation with him soon after the commencement of the suit, said that the plaintiff need not have sued him, for if he had come forward and settled certain claims which the defendant had against him, the defendant would have given him

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his powder. To another witness who spoke to him before the commencement of the suit at the instance of the plaintiff he said that he should be ready to deliver the powder whenever the plaintiff settled a suit which Doctor Ewell had brought against him in the District Court at Alexandria. Other witnesses proved declarations of the same import.

The defendant demurred to this testimony, and the plaintiff joined in demurrer. The court gave judgment in favor of the defendant, and the plaintiff has brought his cause by a writ of error into this Court.

It is contended on the part of the plaintiff that he has proved an acknowledgment of the debt and that such acknowledgment, according to a long series of decisions, revives the original promise or lays a foundation on which the law raises a new promise.

The English as well as American books are filled with decisions which support this general proposition. An unqualified admission that the debt is due at the time has always been held to remove the bar created by the statute. But where the terms of the acknowledgment are in any degree equivocal or where some qualification has been annexed to the admission, the question whether the declarations of the party amount to an acknowledgment of an existing debt on which the law will raise an assumpsit has been differently determined.

Leaper v. Tatton, 16 East 420, was a suit against the acceptor of a bill of exchange

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who pleaded the statute of limitations. At the trial, the plaintiff offered a witness who swore that the defendant, when applied to for payment, said that he had been liable, but was not liable then because the bill was out of date. He acknowledged his acceptance, but said he would not pay it, that it was not in his power to pay it. A verdict was taken for the plaintiff, and on a motion for a new trial, Lord Ellenborough said

"As to the sufficiency of the evidence of the promise, it was an acknowledgment by the defendant that he had not paid the bill, and that he could not pay it, and as the limitation of the statute is only a presumptive payment, if his own acknowledgment that he has not paid be shown, it does away the statute."

Bayley, J. said the acknowledgment was evidence of a debt; acknowledging his acceptance and that he had not paid it created a debt. The rule was discharged.

Although in this case the defendant did not expressly admit the existence of the debt, the implication is irresistible. The reason he assigns for not being liable is that the bill is out of date, and his reason for not paying it is his inability. The court so understood the testimony, and Lord Ellenborough speaks of his acknowledgment as amounting to an admission that he had not paid the bill and could not pay it.

In the case of *Swan v. Sowell,* 3 Barnw. & Ald. 759, Bayley, J., said that if a party admits the debt and does not say that it is satisfied, or refuses to pay it, alleging at the time an insufficient excuse for not paying it, the law will in

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these cases raise an implied promise to pay the debt then acknowledged to be due.

The language of Mr. Justice Bayley is not entirely free from doubt. If by "insufficient excuse" he means an excuse which in itself implies an admission that the debt remains due except for the bar created by the act of limitations, the proposition is undoubtedly supported by the general course of the cases. But if his declaration extends to an excuse which, if true, furnishes a real objection to the payment of the claim in whole or in part, we think it is laid down too broadly.

Both the English and American cases are very well summed up in a note in 4 Johns. 469. note *b* . The current of the English decisions seems to be in favor of the principle that any expressions which amount to an admission that the debt was originally due and has not been paid will remove the bar created by the act and

revive the original assumpsit. The decisions, however, as to this point have not been entirely uniform. In *Coltman v. Marsh,* 3 Taunt. 380, on a motion to set aside a nonsuit in a case in which the statute of limitations had been pleaded, it appeared that the defendant had said to the plaintiff "I owe you not a farthing, for it is more than six years since." It was contended that these words ought to have been left to the jury, but the court refused the motion. So in the case of *Leaper v. Tatton,* 16 East 420, the defendant said "that he had been liable,

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but was not liable then because the bill was out of date." Lord Ellenborough held at *Nisi Prius* that this might be considered as no more "than pleading the statute of limitations in his own person," and the verdict was taken on other words spoken at the same time. Yet these words imply very strongly that the debt was originally due and remains unpaid.

Some of the American cases proceed on the idea of a new promise for which the ancient debt is a sufficient consideration, and this is a distinction of great importance where the acknowledgment is connected with anything required by the defendant.

In the case of *Clementson v. Williams,* 8 Cranch 72, this Court expressed the opinion that the doctrine of reviving debts barred by the act of limitations had been carried full as far as it ought to be carried, and that the statutes on that subject ought to be construed like other statutes so as to effect the intention of the legislature. In that case a declaration by one partner that the account was originally due and that he had never paid it and did not know that it had ever been paid, but supposed his partner had discharged it, was declared to be insufficient to take the case out of the statute. It is true that the partnership was dissolved when this declaration was made, but the court did not put the case on that point. It was determined on the insufficiency of the acknowledgment. We think, upon the principles expressed by the Court in the case in 8 Cranch, that an

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acknowledgment which will revive the original cause of action must be unqualified and unconditional. It must show positively that the debt is due in whole or in part. If it be connected with circumstances which in any manner affect the claim or if it be conditional, it may amount to a new assumpsit for which the old debt is a sufficient consideration, or if it be construed to revive the original debt, that revival is conditional and the performance of the condition or a readiness to perform it must be shown.

In the case at bar, the defendant said to one witness that if the plaintiff had come forward and settled certain claims the defendant had against him, he would have given him his powder, and to another he said

"he should be ready to deliver the powder whenever the plaintiff settled a suit which Doctor Ewell had brought against defendant in the court of Alexandria on account of a patent right and machine sold to him by the plaintiff."

These declarations do not amount to an unqualified and unconditional acknowledgment that the original debt was justly demandable. They assert a counterclaim on the part of the defendant which he was determined to oppose to that of the plaintiff. He did not mean to give validity to the plaintiff's claim but on condition that his own should be satisfied. These declarations therefore cannot be construed into a revival of the original cause of action unless that be done on which the revival was made to depend. It may be considered as a new promise for which

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the old debt is a sufficient consideration, and the plaintiff ought to prove a performance or a readiness to perform the condition on which the promise was made.

A distinction seems to have been taken in England between a promise to pay a sum of money and a contract for the performance of a particular act. In *Boydell v. Drummond,* 2 Campb.N.P. 157, Lord Ellenborough said

"If a man acknowledges the existence of a debt barred by the statute, the law has been supposed to raise a new promise to pay it, and thus the remedy is revived; but no such effect can be given to an acknowledgment where the cause of action arises from the doing or omitting to do some act at a particular moment, in breach of a contract."

But without placing the cause on this distinction, the Court is of opinion that the original cause of action is not revived, and that there is no error in the judgment.

Judgment affirmed with costs.

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