

**Carroll Vs. Peake**

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**Court :** US Supreme Court

**Decided On :** 1828

**Appeal No. :** 26 U.S. 18

**Appellant :** Carroll

**Respondent :** Peake

**Judgement :**

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**Carroll v. Peake**

**26 U.S. (1 Pet.) 18**

*ERROR TO THE CIRCUIT COURT OF THE UNITED*

*STATES FOR THE DISTRICT OF COLUMBIA*

## **SYLLABUS**

When a party to an agreement, signed by the other contracting party, had delivered to such, party a copy of the agreement in his own handwriting, but not signed by him, and from the nature of the instrument it was to be fairly presumed

the original was in his custody, notice to produce the original paper in order to give the copy in evidence is not necessary. Such a copy, when offered to charge the party by whom the same was made and who, by the tenor of the agreement, was to perform certain acts therein stated may be considered not as a copy but as an original in relation to the obligations of the party giving the copy, and be so given in evidence.

Where letters, a part of the evidence in the court below, have become lost or mislaid, everything is to be presumed to have been contained in them to support the opinion of the court in relation to their contents, and the party who denies that the letters authorized the decision of the court upon them, must show by evidence their contents.

Surplusage in pleading does not in any case vitiate after verdict.

In a declaration upon an agreement by way of lease, by which the lessor stipulated to let a farm from 1 January, 1820, to remove the former tenant, and that the lessor should have the tenancy and occupation of the farm from that day, free from all hindrance, the assignment of breaches was that although specially requested on the said 1 January, the defendant refused and neglected to turn out the former tenant, who then was or had been in the possession and occupancy of the land, and to deliver possession thereof to the plaintiff, this assignment is sufficient.

It is sufficient that the averment should state the plaintiff's readiness and offer and his request on the first day of January generally, and not at the last convenient hour of that day, and if an averment of a personal demand is made, it need not have been on the land.

The strict doctrines relative to averments in pleading have been applied to special pleas in bar, of tender, and some others of a peculiar character and depending upon their own particular reasons.

Declarations containing general averments of readiness and request have been held sufficient, especially after verdict, unless in very peculiar cases.

The defendant in error instituted a suit against the plaintiff in error to recover damages arising out of alleged breaches of an agreement in the nature of a lease dated 18 December, 1819. The declaration stated the agreement, and the damages claimed were as an indemnity for expenses incurred by the plaintiff under the agreement for losses of profits and for not turning out the tenant who was in possession of the property when the agreement was made. To support the issue on his part, the plaintiff offered to read in evidence to the jury the following copy of a paper (the original of

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which was signed by Joshua Peake) and which was admitted to be wholly in the handwriting of the plaintiff in error.

"I agree to rent of Daniel Carroll, of Dudington, the land rented heretofore to Wilfred Neale, the same being in St. Mary's County, for which I oblige myself to pay, on 1 January, 1821, for one year, from 1 January, 1820, six hundred dollars (\$600), and to pay all taxes on the same independent of the above rent, and also I oblige myself to keep the premises in good repair and not to commit nor suffer to be committed any waste on the said premises."

"Witness my hand, this 18 December, 1819."

"It is agreed that the taxes shall be paid by Joshua Peake, and the said Carroll will allow the same on the tax bill, receipted, out of the rent."

"[Signed] JOSHUA PEAKE"

"Witness"

"WILLIAM DUDLEY DIGGES"

To the admission of this paper by the court the counsel for the plaintiff objected, but the court allowed it to be read by the jury, upon which it rendered a bill of exceptions, and by writ of error the cause was brought before this Court.

MR. JUSTICE TRIMBLE delivered the opinion of the Court.

Joshua Peake brought this action on the case in that court upon a special agreement against Daniel Carroll, who pleaded the general issue, and upon the trial a verdict and judgment were rendered for the plaintiff therein. A bill of exceptions was taken by the defendant in the court below which states that the plaintiff, to support the issue on his part, offered to read in evidence to the jury the following copy of a paper, the execution of the original of which was admitted, signed by Joshua Peake, which copy is admitted to be wholly in the handwriting of the defendant, to-wit:

"I agree to rent of Daniel Carroll, of Dudington, the land rented heretofore to Wilfred Neale, the same being in St. Mary's County, for which I oblige myself to pay, on 1 January, 1821, for one year, from 1 January, 1820, six

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hundred dollars (\$600), and to pay all taxes on the same, independent of the above rent, and also oblige myself to keep the premises in good repair and not to commit nor suffer to be committed any waste on the said premises."

"Witness my hand this 11 December, 1819."

"It is agreed that the taxes shall be paid by Joshua Peake, and the said Carroll will allow the same on the tax bill, receipted, out of the rent."

"JOSHUA PEAKE"

"Witness"

"WILLIAM DUDLEY DIGGES"

Which paper was so offered in evidence, in connection with three letters from defendant to the plaintiff, as a component part of the sum of evidence relied on to

prove the contract as laid in the declaration, which letters are in these words and figures, following, &c; . [The letters were mislaid.]

To the reading of which paper the defendant, by his counsel objected as not being competent and legal evidence to charge the defendant in this case, but the court permitted the said paper to be read in evidence to the jury, &c.;, to which opinion of the court the defendant by his counsel excepted, &c.; The plaintiff then, further to support the issue on his part, offered in evidence to the jury the said letters from defendant to plaintiff and admitted to be in the handwriting of the defendant as component parts, in connection with the said paper before admitted, of the evidence of the agreement on which this action is founded, to the admission of said letters as part of said agreement the defendant by his counsel objected, but the court overruled said objection and permitted said letters to be read to the jury as part of said agreement, to which opinion of the court the defendant by his counsel excepted.

It is insisted by the counsel for the plaintiff in error that these opinions are erroneous and that the judgment of the circuit court should for that cause be reversed.

The bill of exceptions does not put the objection to the paper offered in evidence distinctly upon the ground that, being a copy, it could not be used without timely notice to produce the original. Although some doubt exists whether the objection ought not to have been placed on that ground in the court below in order to make it available here, yet as the whole argument in this Court has proceeded upon the assumption that the question is sufficiently raised upon the bill of exceptions, we will so consider it. The principle relied upon is that a copy cannot be given in evidence if the original be in the possession of the adverse party unless timely

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previous notice has been given him to produce it at the trial. This is certainly true as a general rule. But in examining the numerous adjudged cases to be found in the books in which this general rule has been asserted and applied, we have been

able to find no case like this. They are all cases where the copy offered, had not been made by the party against whom it was attempted to be used. This is a case in which the execution of the original is distinctly admitted, and the paper called a copy is admitted to be wholly in the defendant's handwriting. From the nature of the transaction, he was entitled to and must be presumed to have the custody of the original. The copy, made out by himself, must be presumed to have come to the plaintiff's possession by the defendant's own act, and by making and delivering it to the plaintiff, the defendant consents that it shall be considered genuine and true. We think that under such circumstances, this case forms a just exception to the general rule, and that it is not competent for the defendant below to allege against his own acts and admissions that this paper does not nor may not contain all the verity and certainty of the original. So far we have considered this paper as if it ought to be regarded in the light of a copy. But we think that is not its true character as it was presented to the court and jury. We think that under the circumstances and to the purposes for which it was offered, it may fairly be regarded as an original.

As relates to Peake's contract to pay rent, &c., it was a copy, but was it a copy as respects Carroll's agreement to let the farm? If so, it was a copy without an original, for the original paper was not signed by Carroll and contained no contract on his part. The paper was offered in evidence in connection with the three letters from the defendant to the plaintiff as a component part of the evidence to prove the defendant's agreement to let the farm to the plaintiff and the terms of that agreement. The clerk certifies that the letters referred to are not on file in the cause, and they are not transcribed into the record. In their absence, if there be a supposable case in which they and the paper called a copy were legitimate evidence regarding that paper as an original, and not as a mere copy, it must be so regarded. We are bound to presume everything in favor of the correctness of the decision of the court below until the contrary appears.

If the letters, which are admitted to be in the defendant's handwriting, were relevant to the matter in controversy, and in their absence that must be presumed, no doubt can exist of their being competent and legitimate evidence to prove the

contract sued on so far as they spoke on that subject. It has been already remarked that the paper called a copy was

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admitted to be in the defendant's handwriting and that it must have come to the plaintiff's hands by the defendant's act. Let it be supposed, then, that having copied, in his own hand Peake's agreement to pay rent, &c.;, he had enclosed that paper in one of those letters and referring to it. The letter here stated that he, (Carroll) agreed to let and lease the farm to Peake upon terms expressed in the enclosed paper. It is plain that in the case supposed, the enclosed paper, although it might be a mere copy as respected Peake's part of the contract, yet as respected the contract on Carroll's part, would be truly an original document by adoption and incorporation with the letter, as much as the letter itself. It would be a part of the letter. We do not say the paper was thus enclosed and referred to in the letters or either of them, but it might have been, for ought that appears, and that is enough.

Upon the principle assumed as correct that the opinion of the court below must be regarded as sound until its incorrectness is made to appear, the plaintiff in error cannot prevail unless he can show, in the absence of the letters, that no case could have existed, they being present, in which the paper objected to could be considered in the light of an original document. The case first shows that such a case might have existed and have been proved upon the trial. It is by no means a strange supposition to presume that such was the aspect of the case, for it is perfectly consistent with a known and familiar manner of transacting business where the parties reside at a distance or where, for other causes, the mode of contracting by correspondence is resorted to. It is objected that the declaration shows no cause of action and it is insisted the judgment shall be reversed for that cause. The declaration is very loosely drawn, and a great deal of matter is crowded into it which is impertinent or, at most, only in aggravation of damages. But surplusage in pleadings does not vitiate in any case after verdict, and wholly disregarding the impertinent and irrelevant matter, the declaration contains enough to support the action. The declaration in substance alleges that the defendant

below agreed to rent and to farm let to the plaintiff the farm, for one year from 1 January, 1820, and agreed to remove the former tenant, and that the plaintiff should have the possession and occupancy of the farm from 1 January aforesaid, free from the let, hindrance, or disturbance of anyone. The declaration then proceeds to aver that on the said 1 January, 1820, at the county aforesaid, the plaintiff was ready and willing and offered to the said Daniel (the defendant) to take possession of the said land and farm and to rent and occupy the same, &c.;, and afterwards assign breaches, *inter alia*, in this, that

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although specially requested so to do, on the said 1 January, 1820, the defendant refused and neglected to turn out the tenant, who then was and had been in the possession and occupancy of the said land and farm, and to deliver the possession thereof to the said Joshua.

The specific objections urged in argument are that the plaintiff should have averred his readiness and offered his request, not on 1 January generally, but at the last convenient hour of that day, and that instead of charging a personal demand, it ought to have been averred to have been made on the land. It must occur to everyone that an offer and request upon the land in the absence of the defendant would be a very idle and useless ceremony, and that an offer and request to him personally was much better calculated to enable him to perform his duty and fulfill his agreement.

We cannot admit that it was necessary the offer and request should be made at the last convenient hour of the day. The strict doctrines contended for have been applied to special pleas in bar of tender, and some others of a peculiar character and depending upon their own particular reasons, but there is no analogy between them and this case.

In declarations, general averments of readiness and request on the day have always been held sufficient, especially after verdict.

We are of opinion, there is no error in the judgment and proceedings of the circuit court, and the same is

*Affirmed with damages and costs.*

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