Livingston Vs. Smith

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Court : US Supreme Court

Decided On : 1831

Appeal No. : 30 U.S. 90

Appellant : Livingston

Respondent : Smith

Judgement :

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Livingston v. Smith

30 U.S. (5 Pet.) 90

ERROR TO THE CIRCUIT COURT

OF THE DISTRICT OF NEW JERSEY

SYLLABUS

Insufficient and defective pleading.

A sheriff, having a writ of foreign attachment issued according to the laws of New Jersey, proceeded to levy the same on the property of the defendant in the attachment. After the attachment was issued, the plaintiff took the promissory notes of the defendant for his debt payable at a future time, but no notice of this adjustment of the claim of the plaintiff was given to the sheriff, nor was the suit on which the attachment issued discontinued. The defendant brought replevin for the property attached, the sheriff having refused to redeliver it. *Held* that the sheriff was not responsible for levying the attachment for the debt so satisfied or for refusing to redeliver the property attached.

A previous attachment issued under the law of New Jersey of property as the right of another could not divest the interest of the actual owner of the property in the same so as to prevent the sheriff's attaching the same property under a writ of attachment issued for a debt of the same actual owner.

John R. Livingston instituted an action of replevin against Moses Smith, the defendant in error,

"for that he, Moses Smith, on 2 November, 1826, at the Township of Newark in the County of Essex and State of New Jersey, took the goods and chattels of the plaintiff in the replevin, . . . to-wit, the steamboat *Sandusky,* her engines, &c.;,"

and unjustly detains them, &c.;

To the declaration the defendant, Smith, pleaded property in Robert Montgomery Livingston, at the time of the taking, and also made cognizance or avowry as follows:

First. That the goods and chattels mentioned in the declaration were taken by him on 4 November, 1826, as sheriff of the County of Essex, under a writ of attachment issued out of the court of common pleas of the county, at the suit of James W. Higgins against John R. Livingston, and that the goods were detained by him until they were replevied by the plaintiff in this suit on 13 November, 1826, before the return of the writ.

Second. That as sheriff, he took the same goods and chattels on 2 November, 1826, under a like writ of attachment

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at the suit of James W. Higgins against Robert M. Livingston, in whose possession they then were.

To the first cognizance the plaintiff, John R. Livingston, pleaded that after the taking of the goods and before the commencement of this suit on 29 November, 1826, on accounting with Higgins, he was found indebted to him in the sum of eight hundred and ninety-six dollars, the debt for which the attachment had issued, and on 1 April, 1827, he tendered to Higgins the said sum of money, which he received in full satisfaction of the same, and upon the return of the attachment there were no further proceedings thereon by Higgins or by any other person, and by means thereof, according to the practice of the court, the writ of attachment was ended, &c.;

The second plea stated that before the commencement of this suit and before the return of the attachment on 29 November, 1826, he, John R. Livingston, delivered to Higgins, the plaintiff in the attachment, two promissory notes for the whole amount of the debt due to him, payable at three and four months, which were paid by him according to the tenor thereof.

The third plea set forth that before the appointment of any auditors under the attachment, on 9 January, 1828, the plaintiff, Higgins, voluntarily discontinued the same of record.

Fourth plea. That the goods, at the time they are supposed to be attached as the property of John R. Livingston at the suit of Higgins, and until they were replevied, were in the possession of the defendant as sheriff under an attachment against Robert M. Livingston at the suit of the same Higgins.

To the second cognizance the plaintiff, John R. Livingston, pleaded

First. That the property, when attached, was not in the possession of the said Robert M. Livingston, as is alleged by the said second cognizance.

Second. That the property, when attached, was in John R. Livingston, and traverses the property being in Robert M. Livingston.

To the first plea to the first cognizance, the defendant, Smith, demurred, and showed for cause

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First. That the tender to and acceptance by Higgins of the money in satisfaction of the debt after the commencement of the action of replevin and before the attachment was discontinued. Second, that the plea is argumentative.

To the second plea to the first cognizance, the defendant, Smith, also demurred, and showed for cause first that the notes stated in the plea were to be in satisfaction of the debt; yet it is not shown by the plea that the notes were paid off before the commencement of the suit. Second, that it does not appear by the plea that the plaintiff was entitled to a return or redelivery of the goods. Third, that the matters in the plea are immaterial.

To the third plea to the first cognizance, the defendant demurred and showed for cause first, because it appeared that when the replevin was sued out, the attachment was in full force, and second that the matters set forth therein do not maintain the count. To the fourth plea there was a general demurrer.

To the first plea to the second cognizance the defendant demurred and showed for cause that the matters are unintelligible, uncertain, insufficient, irrelative and informal, and he put in a general demurrer. The plaintiff joined in each demurrer.

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MR. JUSTICE JOHNSTON delivered the opinion of the Court.

The facts and merits of this case lie in a very narrow compass.

The action is replevin, sued out of the Circuit Court of the United States for the District of New Jersey. The case presented by the pleadings is this.

In the year 1827, one Higgins sued out several attachments in the state court, both against this plaintiff and one R. M. Livingston. Smith is sheriff of the state and, as such, on 2 November, he arrested a steamboat as the property of R. M. Livingston, and again on the 4th of the same month, he seized the same boat as the property of this plaintiff, J. R. Livingston.

J. R. Livingston, being a citizen of New York, brings this suit in a court of the United States and counts in the ordinary form of the declaration in replevin. Smith avows and justifies under the two attachments, and Livingston, in a variety of replications, seeks to repel this justification:

1. On the plea of payment to the plaintiff in attachment subsequent to the attachment, but without notice to the sheriff Smith or any averment of discontinuance other than what may be gathered from facts stated from which a discontinuance might have been matter of deduction or inference.

This plea is certainly insufficient in matter and defective in form.

2. On the plea of an accord made prior to the suit, by which it was agreed by Higgins to receive certain promissory notes which, when paid, should be in full satisfaction of the debt, which notes were duly paid at maturity.

On this plea there has been some difference of opinion, but besides that it does not aver an agreement to discontinue, admitting that, as against the plaintiff in the attachment, it would have been a good defense, the question still recurs can a sheriff, without notice, be responsible for levying an attachment on a satisfied debt or for not redelivering the property attached, without a discontinuance or at least notice of the satisfaction? We say nothing of the rights or remedies of the defendant in attachment against the plaintiff; the question here is whether the sheriff, under such circumstances, is not

warranted by his writ in proceeding to act. How can he undertake to decide the question of liability between the parties, or what security has he against the plaintiff should he act erroneously in not pursuing the exigencies of his writ? No question of property is here raised between him and the defendant, for the levy and detention and plea all affirm the property to be in the defendant in attachment.

This plea therefore makes out no cause of action.

3. On the plea of a discontinuance of record; but this is obviously and radically insufficient, since the date of the discontinuance is expressly subsequent to the institution of the suit. This is admitting that there was no cause of action at the time of its institution. It does not raise the question whether a subsequent unlawful act may not make the sheriff a trespasser *ab initio,* nor whether replevin may not be brought for unlawful detention as well as unlawful taking, since in either case the cause of action must precede its institution.

4. On the plea that the goods, when attached as the property of this plaintiff, were in fact in possession of the sheriff under the attachment against R. M. Livingston, and the levy made thereon two days previous. But what cause of action does this make out for this plaintiff? If they were the property of another, he has nothing to complain of, and if they were his, there was the attachment against himself to justify the taking. A previous attachment, as the right of another, could not divest his interest, and the property being in the hands of the sheriff as his bailee or to his use, could not divest the sheriff of the right to seize or detain it under a writ against him.

These remarks dispose of the pleas to the first cognizance. To the second, the plaintiff relies on the pleas,

1. That the property was not at the time of the attachment levied in the possession of R. M. Livingston.

But this is certainly tendering an immaterial issue, since it matters not in whose possession the property is found if the taking be otherwise rightful.

2. That the property was his own at the time it was attached as the property of R. M. Livingston, and not the property of R. M. Livingston. And this plea probably presents the only question intended by the suit, but unfortunately it comes

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embarrassed with circumstances which render it impossible to consider the merits in this suit. Had this plaintiff taken measures to disembarrass his case of the attachment against himself before he brought suit, the defendant must have met him upon the question of property. But this plea does not go to the whole justification, since, admitting the truth of it, it still leaves property liable to the attachment against himself.

To this must be added a defect in confining the language of the traverse to the interest of R. M. Livingston, since the right of the plaintiff generally, and not as against R. M. Livingston alone, was necessary to maintain his action.

These views of the subject render it unnecessary to examine the mere general question made upon the relation in which these two courts stand to each other, and we only notice it to avoid any misapprehension that might possibly occur from passing it over unnoticed.

Upon the whole, the majority of the Court is of opinion that the demurrers were rightly sustained, and the judgment below is

Affirmed with costs.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of New Jersey and was argued by counsel, on consideration whereof it is considered, ordered, and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed with costs.