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Kirkman Vs. Hamilton

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Court : US Supreme Court

Decided On : 1832

Appeal No. : 31 U.S. 20

Appellant : Kirkman

Respondent : Hamilton

Judgement :

Kirkman v. Hamilton - 31 U.S. 20 (1832)
U.S. Supreme Court Kirkman v. Hamilton, 31 U.S. 6 Pet. 20 20 (1832)

Kirkman v. Hamilton

31 U.S. (6 Pet.) 20

ON CERTIFICATE OF DIVISION IN OPINION OF THE JUDGES OF THE CIRCUIT

COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST TENNESSEE

SYLLABUS

The statute of limitations of North Carolina, passed in 1715, in force in Tennessee, bars the particular actions which it recites, and no others. It does not bar actions of

debt generally, but those only which are brought for arrearages of rent.

In an action of debt on a promissory note instituted in the Circuit Court of Tennessee, the defendant pleaded the statute of limitations of North Carolina of 1715, in force in Tennessee. *Held* that the statute did not extend to the action, and that the plaintiff was not barred.

By the acts of the Legislature of North Carolina in force in Tennessee, the endorser of a promissory note is entitled to sue in his own name, as on inland bills of exchange in England, and he may therefore bring an action of debt on a promissory note held by him.

The case of *Raburg v. Peyton,* 2 Wheat. 385, cited and confirmed.

H. and D., citizens of Tennessee, gave their promissory note to T.R. & Co., also citizens of Tennessee, payable in fifteen months. Before the note became due, T.R. & Co. removed to and became citizens of Alabama, and also before the day appointed for the payment of the note, endorsed it to K., a citizen of Alabama, and in the declaration on the note, the plaintiff averred that T.R. & Co. were citizens of Alabama. *Held* that the Circuit Court of Tennessee had jurisdiction of the suit under the eleventh section of the act of 1789. The payees of the note having, before the note became due, become citizens of Alabama, could have prosecuted a suit on the note in the Supreme Court of Tennessee if no assignment had been made.

In the Circuit Court of the United States for the District of West Tennessee, Thomas Kirkman, Junior, a citizen of Alabama, instituted in April 1823, an action of debt, against John W. Hamilton and Thomas Donoho, citizens of Tennessee, upon a promissory note drawn by the defendants under the firm of Hamilton and Donoho in West Tennessee, on 22 September, 1818, for the sum of $3,000, payable fifteen months after date to Thomas Ramsey and Company or order, and Thomas Ramsey and Company having become citizens of Alabama, and the note being unpaid, endorsed the same to the plaintiff, Thomas Kirkman, Junior.

To this declaration the defendants pleaded first the statute of limitations of Tennessee, alleging that the cause of action

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did not accrue within three years. Second, that at the time the note was given they were citizens and inhabitants of Smith County in the State of Tennessee, of which state the plaintiff was then a citizen, and in which state the note was given.

To the plea of the statute of limitations, and to the second plea, the plaintiff demurred, and assigned as causes of demurrer:

1. That the plea does not state that this is an action of debt for arrearages of rent.

2. The declaration is not in debt for arrearages of rent.

3. The cause of action sued upon is not arrearages of rent.

4. The second plea is uncertain, unsound, and insufficient.

Upon the argument of the demurrer in this cause, as applicable to the plea of the statute of limitations to the second count in the plaintiff's declaration, the court were divided in opinion upon the following questions: whether the plea of the statute of limitations is a bar to the recovery of the plaintiff on the second count in the declaration, and whether an action of debt can be supported on the cause of action set forth in said second count; whether the averment of the citizenship of Thomas Ramsey & Co., the payers of the note in the said second count, is sufficient to sustain the jurisdiction of this Court under the provisions of the eleventh section of the Judiciary Act of 1789. Which certificate of division of opinion was ordered to be certified to the Supreme Court of the United States according to law.

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

This case comes up from the Court of the United States for the Seventh Circuit and District of West Tennessee, on a certificate that the judges of that court were divided in opinion on the following questions.

1. Whether the plea of the statute of limitations is a bar to the recovery of the plaintiff, on the second count in the declaration?

2. Whether an action of debt can be supported on the cause of action set forth in said second count?

3. Whether the averment of the citizenship of Thomas Ramsey & Co., the payees of the note in the said second count, is sufficient to sustain the jurisdiction of this

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Court, under the provisions of the eleventh section of the Judiciary Act of 1789?

The second count is a declaration in debt on a promissory note executed by the defendants, made payable to Thomas Ramsey & Co., then citizens of Tennessee, and endorsed by them, after becoming citizens of Alabama, to the plaintiff, a citizen of Alabama, who instituted the suit as assignee of the said note.

The first question depends on an act of the State of North Carolina, passed in the year 1715, and was the law of Tennessee; the eighth section of which enacts

"That all actions of trespass, detinue, actions sur trover and replevin for taking away of goods and chattels, all actions of account, and upon the case, all actions of debt for arrearages of rent, and all actions of assault, menace, battery, wounding and imprisonment, or any of them, which shall be sued or brought at any time after the ratification of this act, shall be brought within the time and limitation in this act expressed, and not after; that is to say, actions of account render, actions upon the case, actions of debt for arrearages of rent, actions of detinue, replevin and trespass *quare clausum fregit,* within three years next after the ratification of this act, or within three years next after the cause of such action or suit, and not after."

This statute bars the particular actions it recites, and no others. It does not bar actions of debt generally, but those only which are brought for arrearages of rent. This is not brought for arrearages of rent, and is consequently not barred.

The action of debt, unless it be brought for arrearages of rent, not being within this statute, the court perceives no other which bars it. If the seventh section of the thirty-first chapter of the act of 1715 was even to be considered as adopting the act of limitations of the fourth of James I, it would not affect this case, because the suit was brought within the time allowed by that act.

The act of 1786, chapter 4, was intended to make all bills, bonds, &c.;, negotiable, though under seal, and to enable the assignee to sue in his own name, and to bring an action on the case, notwithstanding the seal. The proviso of the fifth section, that

"the act of limitations shall apply to all bonds, bills, and other securities hereafter executed, made transferable by this

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act, after the assignment or endorsement thereof, in the same manner as it operates by law against promissory notes,"

cannot, we think, be fairly construed to extend the act of limitations in its operation on promissory notes.

We are therefore of opinion that the plea of the statute of limitations is not a bar to the recovery of the plaintiff, on the second count in his declaration.

The second question propounded is whether an action of debt can be supported on the cause of action set forth in the second count?

The cause of action is a promissory note made by the defendants, and endorsed by the payees to the plaintiff.

In 1762, the Legislature of North Carolina passed an act, chapter 9, "for the more easy recovery of money due upon promissory notes, and to render such notes negotiable." The second section declares that all such notes, payable to order, "may be assignable over in like manner as inland bills of exchange are by custom of merchants in England," and that the person or persons "to whom such money is or shall be payable may maintain an action for the same as they might upon such bill of exchange," and the person or persons

"to whom such note so payable to order is assigned or endorsed may maintain an action against the person or persons . . . who signed or shall sign such notes, or any who shall have endorsed the same, as in cases of inland bills of exchange."

The note claimed in the second count of the declaration is payable to order.

In 1786, the legislature passed "an act to make the securities therein named negotiable," by which notes not expressed to be payable to order are placed on the same footing with those which are made so payable. The endorsee being thus entitled to sue in his own name, in like manner as on inland bills of exchange in England, the inquiry is whether the endorsee of an inland bill of exchange may maintain an action of debt thereon in England.

This question was fully considered by this Court in the case of *Raburg v. Peyton,* reported in 2 Wheat. 385, which was an action of debt brought by the endorsee of a bill of exchange against the acceptor. The cases were reviewed in the opinion then given, and the Court decided clearly that both on principle and authority the action was maintainable.

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We therefore think that an action of debt can be supported on the cause of action set forth in the second count.

The third question asks

"Whether the averment of the citizenship of Thomas Ramsey & Co., the payees of the notes in the said second count, is sufficient to sustain the jurisdiction of this Court under the provisions of the eleventh section of the Judiciary Act of 1789?"

That section gives jurisdiction to the circuit courts of the United States where "the suit is between a citizen of the state where the suit is brought, and a citizen of another state." This suit is brought in the Supreme Court for the State of Tennessee by a citizen of Alabama against a citizen of Tennessee. It comes, therefore, within the very words of the section, and is within the jurisdiction of the court unless taken out of it by the exception. The words of the exception, so far as they apply to the case, are

"Nor shall any district or circuit court have cognizance of any suit to recover the contents of any promissory note or other chose in action in favor of an assignee unless a suit might have been prosecuted in such suit to recover the said contents if no assignment had been made."

When this note was assigned, the payees, as is averred in the second count, had become citizens of Alabama, and might, consequently, have prosecuted a suit to recover the contents of the said note in the Circuit Court of the United States for Tennessee if no assignment had been made. The averment of the citizenship of Thomas Ramsey & Co. in the said second count is therefore sufficient to sustain the jurisdiction of that court under the provisions of the eleventh section of the Judiciary Act of 1789.

All which was ordered to be certified to the Circuit Court of the United States for the Seventh Circuit and District of West Tennessee.

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