Yeaton Vs. Lenox

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Court : US Supreme Court

Decided On : 1834

Appeal No. : 33 U.S. 123

Appellant : Yeaton

Respondent : Lenox

Judgement :

Yeaton v. Lenox - 33 U.S. 123 (1834)
U.S. Supreme Court Yeaton v. Lenox, 33 U.S. 8 Pet. 123 123 (1834)

Yeaton v. Lenox

33 U.S. (8 Pet.) 123

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES

FOR THE COUNTY OF ALEXANDRIA IN THE DISTRICT OF COLUMBIA

SYLLABUS

A party may, after an appeal has been discussed for informality, if within five years, bring up the case again.

The plaintiffs united severally in a suit, claiming the return of money paid by them on distinct promissory notes given to the defendants. They are several contracts, having no connection with each other. These parties cannot join their claims in the same bill.

Several creditors may not unite in a suit to attach the effects of an absent debtor. They may file their separate claims, and be allowed payment out of the same fund, but they cannot unite in the same original bill.

At an early day in the term, Mr. Coxe, as counsel for the appellees, moved to dismiss the case, as he alleged it had been already twice discussed by the Court, 32 U. S. 7 Pet. 220.

Mr. Swann and Mr. Neale opposed the motion.

The case was dismissed at a prior term of the Court for want of an appeal bond. There had been but one appeal prior to the present, which was entered in 1833. The counsel for the appellants are now prepared to proceed with the argument.

It is not admitted that a previous irregular appeal prevents another unless the five years allowed by law for an appeal have expired.

The record of the former appeal was not filed in the time required by the rules of the Court, and after it was dismissed, the appellants went into the Circuit Court of the County of Alexandria and prayed for this appeal, which was granted, and now all the requisites of the law and of the rules of Court have been fully complied with. While it is admitted that after an appeal, the appellees, on the omission of the appellants to do so, may file the record, have it opened, and pray to have

it dismissed and thus finally disposed of, and precluding a second appeal, yet this has not been done, and the action of the Court in the case, when formerly before it, has not such effect.

The Court refused the motion. A party may, after an appeal has been discussed for informality, if within five years, bring up the case again.

The case came on afterwards for argument: Mr. Swann and Mr. Neale for the appellants and Mr. Coxe for the appellees.

The Court gave no opinion on the questions of law submitted in the argument, but dismissed the case for informality in the institution of the suit.

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

The plaintiffs, with several other persons, had, previous to the year 1804, associated with each other under the name of the Marine Insurance Association of Alexandria for the purpose of making insurances on vessels and cargoes against sea risks. On 26 June, 1804, James Wilson obtained an insurance on the *Governor Strong* on a voyage from Norfolk to Liverpool to the amount of $10,000. The policy is inserted on the record. It is not a joint contract made by the association as a company, but by each for himself. Each subscribes the sum for which he becomes responsible. James Wilson had purchased the *Governor Strong* from Alexander Henderson & Co., and appears to have endorsed their notes in the Bank of the United States. After his death, his representatives, in September or October, 1805, made a transfer of the vessel to the bank, for the security of that debt.

Sometime after the vessel had sailed, intelligence was received of injury sustained by the *Governor Strong,* and Wilson claimed from the insurers a considerable sum on that account, informing them at the same time that the money belonged to the bank. Although the insurers were not satisfied of their liability, they agreed to advance their several notes, dated 25 May, 1805, to the said Wilson, payable sixty days after date at the office of discount and deposit, Washington. The

Page 33 U. S. 125

bill charges that these notes were advanced on condition that the money should be returned to them by the bank, should it afterwards appear that they were not

liable for the partial loss sustained by the *Governor Strong,* and that this agreement was communicated to the bank. These notes were passed to the bank and paid by the several makers when due.

In a suit afterwards brought on the policy for the benefit of the bank, it was determined that the underwriters were not liable for the loss sustained by the *Governor Strong,* after which, application was made for the return of the money paid on the notes given to Wilson, which the bank refused, alleging that the money had been paid absolutely on account of the debts due from Alexander Henderson & Co.

The charter of the bank having expired, and its affairs being committed to trustees, the makers of the several notes which have been stated united in this suit against the trustees. As they were nonresidents of the district, their property was attached in the hands of the debtors of the bank, who were also made defendants.

James Davidson afterwards undertook to perform the decree of the court, and the attachment was discharged. At a subsequent term, Davidson was, by consent, made a defendant, and his answer was received as an answer for the trustees.

He says that in January, 1806, the bank received promissory notes from James Wilson, executed to the plaintiffs severally, amounting to $2,124.04, to be placed, when paid, to the credit of Alexander Henderson & Co., on account of a loss by the underwriters. Should the underwriters not be liable, the notes were to be returned if unpaid; if paid, the money was to be refunded. These notes, not being paid, were returned. He admits that the notes mentioned in the bill were deposited on 30 May, 1805, to go, when paid, to the credit of Alexander Henderson & Co., but has no recollection of any condition respecting their return. An amended bill was filed in which the said Davidson was again required to answer more precisely respecting the transaction -- to say whether he was not, at the time, cashier of the office at Washington; to state in what way the notes were deposited in bank on 30 May, 1805; were they sent in a letter? If so, the defendant is

required to produce it, or a copy of it, and the entry made on the books of the bank in relation to the said notes.

The answer of Davidson refers to his former answer respecting the notes deposited on 30 May, 1805, and says that he has no other information than is there given. He does not recollect in what manner the notes were transmitted, nor whether they were accompanied by any letter.

"No such letter is now in his possession. No entry was made in the books of the bank in relation to said notes, except that they were to go, when paid, to the credit of Alexander Henderson & Co., to whose credit such of them as were paid were carried."

The entry on the bank books is made an exhibit, and is as stated in the answer of Davidson.

A correspondence which took place on this subject with the then president of the office of the bank at Washington is contained in the record, and some testimony was taken by the plaintiffs. The letters and the depositions furnish strong presumptive evidence that if the bank supposed the notes to be paid absolutely on account of the debt due from Alexander Henderson & Co., the makers supposed them to be paid conditionally, and that the money was to be refunded should they not be held responsible for the partial loss sustained by the governor Strong.

On a hearing, the bill was dismissed with costs and the plaintiffs appealed to this Court.

Whatever might be the condition on which the plaintiffs delivered their notes to Wilson, the bank cannot be affected by it unless it was communicated to the office. The testimony that it was communicated has great plausibility, but when it is recollected that the deposit of January, 1806, might be confounded with that of May, 1805, we are not satisfied that the testimony ought to countervail the answer of the cashier and the entry on the books of the bank. We are, however, relieved from the difficulty of deciding on a doubtful fact by an objection taken by the appellees to the action.

The plaintiffs who unite in this suit claim the return of money paid by them severally on distinct promissory notes. They are several contracts having no connection with each other. These parties cannot, we think, join their claims in the same bill.

Page 33 U. S. 127

The appellants contend that several creditors may unite in a suit to attach the effects of an absent debtor. We do not think so. They may file their separate claims and be allowed payment out of the same fund, but cannot unite in the same original bill.

The decree of the circuit court 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 Columbia holden in and for the County of Alexandria, and was argued by counsel, on consideration whereof it is ordered and decreed by this Court that the decree of the said circuit court in this cause be and the same is hereby affirmed with costs.