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Bradford Vs. Williams

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Court : US Supreme Court

Decided On : 1846

Appeal No. : 45 U.S. 576

Appellant : Bradford

Respondent : Williams

Judgement :

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Bradford v. Williams

45 U.S. (4 How.) 576

ERROR TO THE COURT OF APPEALS

FOR THE TERRITORY OF FLORIDA

SYLLABUS

By a statute of Florida, where suit is brought upon a bond, the plaintiff need not prove its execution unless the defendant denies it under oath. It also provides that such an instrument may be assigned; that the assignee becomes vested with all

the rights of the assignor, and may bring suit in his own name.

Under this statute, where a joint and several bond was signed by three obligors and made payable to three obligees, one of whom was also one of the obligors, and the obligees assigned the bond, the fact that one of the obligors was also an obligee was no valid defense in a suit brought by the assignee against the two other obligors.

The inability of one of the obligees to sue himself did not impair the vitality of the bond, but amounted only to an objection to a recovery in a court of law. The assignment, and ability of the assignee to sue in his own name, removed this difficulty.

The statute of Florida places bonds, as far as respects negotiability and the right of the assignee to sue to his own name, upon the same footing as bills of exchange and promissory notes. The case therefore falls within the principle of a partner drawing a bill upon his house, or making a note in the name of the firm, payable to his own order, both of which are valid in the hands of a *bona fide* holder.

These were kindred cases, argued and decided together. Bradford and Judge were obligors upon the same bonds, although sued separately, and the same questions were common to both cases.

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They came up, by writ of error, from the Court of Appeals for the Territory of Florida.

The case was this.

The defendant in error brought an action of debt in the Superior Court in the Middle District of Florida against the plaintiff in error, and declared upon four bonds, amounting in the aggregate to the sum of $4,854.28, made by the defendant below, William P. Craig, and Ed. Bradford, by which they bound themselves jointly and severally to pay that sum to William B. Nuttall, Hector W.

Braden, and William P. Craig, or to their order, setting out the assignment of said bonds, in due and proper form, by the obligees to the plaintiff in the suit.

The defendant, by his attorney, craved oyer of the bonds, and, after setting out the same, pleaded

"That William P. Craig, one of the obligors mentioned, was and is the same identical person named William P. Craig as one of the obligees in the said bonds who, together with the others, had endorsed the bonds to the plaintiff, and that the same was therefore null and void at law, and not the deed of the defendant,"

concluding with a verification.

To which the plaintiff demurred, and the defendant joined in the demurrer.

The court gave judgment for the plaintiff on the demurrer, which judgment was affirmed by the court of appeals, upon which this writ of error was brought.

The record not having been filed in time, the cases had been docketed and dismissed under the forty-third rule of court, on motion of the defendant in error. Afterwards, a motion was made by Mr. Westcott to reinstate them, which was argued by Mr. Westcott and opposed by Mr. Thompson; upon which motion.

MR. JUSTICE Mc LEAN delivered the opinion of the Court.

A writ of error having been allowed in this case, and the record not having been filed by the plaintiff within the forty-third rule, a motion was made by the counsel of the defendant, on presenting a statement of the judgment below, regularly certified, to dock it and dismiss the cause, which the court ordered to be done. And now a motion is made to set aside that order, on the ground that the clerk, who certified the judgment, acted without authority.

The certificate objected to is in the proper form, is signed by R. T. Birchett, Clerk of the court of Appeals of Florida, and is authenticated by the seal of that court.

Florida was admitted into the Union as a state, on 3 March last, but provision was made under the seventeenth article in the Constitution for the continuance of the courts and officers of the territory until superseded under the laws of the state. We think the clerk, having possession of the records of the court of appeals, has a legal right, under its sanction, to certify its judgments,

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and therefore that the order of dismissal cannot be set aside on the above ground. But in consideration of a change of government in the territory and the consequent embarrassments and doubts in regard to this writ of error, and also in consideration that the plaintiff in error, in seven days after the above dismissal, made this motion and asked leave to file the record, the court will set aside the former order, and permit the record now to be filed, on the condition that at the option of the defendant in error, the plaintiff shall submit the case, on printed arguments, at the present term.

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MR. JUSTICE NELSON delivered the opinion of the Court.

Whether the obligees of the bonds in question could have maintained an action at law against the defendant is a question we need not determine, though it is not easy to perceive the force of the objection urged against it, namely, that Craig, one of the co-obligors,

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is also an obligee. The bond is joint and several, and the suit against Judge, one of the obligors; and if it had been brought in the name of the obligees, Craig would not have been a party plaintiff and defendant, which creates the technical difficulty in maintaining the action at law. It would have been otherwise if the obligation had been joint and not several, for then the suit must have been brought jointly against all the obligors.

It has been held that if two are bound jointly and severally, and one of them makes the obligee his executor, the obligee may, notwithstanding, maintain an action against the other obligor. *Cock v. Cross,* 2 Levinz 73; 5 Bac.Abr. 816, tit. *Oblig.,* D. 4.

But conceding, for the sake of the argument, the objection to be well taken, that a suit at law would not lie in the name of the obligees, we have no difficulty in maintaining it, even in the aspect in which the case is presented, and has been argued, before us.

By an act of the Legislature of Florida it is provided

"That it shall not be necessary for any person who sues upon any bond, note &c.;, to prove the execution of such bond, note &c.;, unless the same shall be denied by the defendant under oath."

And also

"That the assignment or endorsement of any of the forementioned instruments of writing shall vest the assignee or endorsee thereof with the same rights, powers, and capacities as might have been possessed by the assignor or endorser. And the assignee or endorsee may bring a suit in his own name."

Duval's Comp. 96, 33, 34.

The bonds have been duly assigned in this case, and the suit is in the name of Williams, the assignee, and it being thus authorized by the laws of Florida, all difficulty as to the remedy at law, arising out of the circumstance of the same party being plaintiff and defendant, is removed.

The act just recited provides that the assignee shall be vested "with the same rights, powers, and capacities as might have been possessed by the obligees," and inasmuch as the bonds were uncollectable, at law, in the hands of the obligees, it has been argued that, upon the words of the statute providing for the assignment and suit in the name of the assignee, they must be equally invalid and inoperative after the assignment, and in his hands.

This argument doubtless would be well founded and conclusive against the plaintiff, if the objection to the bonds was such as went to vitiate and destroy the legal force and effect of their obligation, such as usury, illegality, or the like, which would constitute a valid defense to a suit, in any form in which it might be brought. So in respect to any other defense in discharge of the obligation, such as payment, release, and the like. For the assignee takes the bonds subject to every defense of the description mentioned, and can acquire no greater rights by virtue thereof than what belonged at the time to the obligees. This, we think, is what the

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statute intended, and is all its language fairly imports, and is, indeed, only declaratory of what would have been the legal effect, without the particular phraseology of the section.

But the only objection here made to the bonds in the hands of the obligees is, the want of legal validity in a court of law, arising out of the difficulty as to the parties, one of them being common to both sides of the obligation; not that they are altogether void and uncollectable, for it is conceded they might have been enforced in a court of equity. They are ineffectual at law, from defect of remedy.

Now the assignment, and ability to sue in the name of the assignees, removed at once this difficulty, and left him free to pursue his remedy at law, and, as all parties concerned are to be taken as having assented to the assignment and delivery to the assignee, including Craig himself, and the suit in his name being sanctioned by the law, we are unable to perceive any well grounded objection to the judgment.

It has been suggested that there could have been no delivery of the bonds to the obligees, and hence none by them to the plaintiff, so as to bind the defendant. But the obvious answer is that all the parties, except Craig, were competent to make a delivery, and as he joined in the assignment, it is not for him to set up the objection for the purpose of invalidating his own act. The inchoate or imperfect delivery as to him in the first instance, arising out of his double relation to the instruments, became complete by his joining in the assignment and delivery to the plaintiff.

The common case of one partner drawing a bill upon his firm, payable to his own order, or of partners making a promissory note payable to the order of one of the firm, which becomes valid in the hands of a *bona fide* holder, and collectable at law, affords abundant authority for the principle of the decision in this case. *Smith v. Lusher,* 5 Cow. 688; *Smyth v. Strader,* decided this term, *ante,* 45 U. S. 404 .

The statute of Florida has put bonds on the footing of bills of exchange and promissory notes, so far as respects negotiability and right to sue in the name of the assignee.

The above principle is therefor strictly applicable to the case in hand.

We are of opinion the judgment of the court below should be

Affirmed.

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