

Mace Vs. Wells

Mace Vs. Wells

SooperKanoon Citation : sooperkanoon.com/80056

Court : US Supreme Court

Decided On : 1849

Appeal No. : 48 U.S. 272

Appellant : Mace

Respondent : Wells

Judgement :

Mace v. Wells - 48 U.S. 272 (1849)

U.S. Supreme Court Mace v. Wells, 48 U.S. 7 How. 272 272 (1849)

Mace v. Wells

48 U.S. (7 How.) 272

ERROR TO THE SUPREME COURT OF

JUDICATURE OF THE STATE OF VERMONT

SYLLABUS

By the fifth section of the United States Bankrupt Act, 5 Stat. 444, the surety upon a promissory note had a right to prove the demand against the maker, who became a bankrupt, and by the fourth section the bankrupt was discharged from

all debts which were provable under the act.

Therefore, where the surety paid the note to the creditor, after the discharge of the bankrupt, and brought suit against the bankrupt for the amount, he was not entitled to recover it.

Page 48 U. S. 273

The following statement of facts was argued upon by the counsel in the court where the cause was originally tried.

" *Orange County Court, December Term 1844* "

" *JARED WELLS v. TIMOTHY L. MACE AND TRUSTEES*"

" *Action of Assumpsit for money paid* "

"The parties agree to the following facts in this case: that the plaintiff signed two notes with the defendant, of the dates and tenor following:"

"\$35.00 *Wells River, July 9, 1840* "

" For value received, I promise to pay Hiram Tracy, or order, thirty-five dollars, in four months, with interest annually."

"TIMOTHY L. MACE"

"JARED WELLS"

"\$157.48 *Wells River, August 14, 1840* "

" For value received, we jointly and severally promise to pay Hutchins & Buchanan, or order, one hundred and fifty-seven dollars and forty-eight cents, in one year, with interest annually."

"TIMOTHY L. MACE"

"JARED WELLS"

"Said first note was paid by said Wells to said Tracy on 12 July, A.D. 1841. Said note was given for the sole and proper debt of said Mace, and Wells signed only as surety, and the whole was a mere matter of accommodation on the part of Wells."

"Said second note was given also for the proper debt of said Mace, and was his to pay. Wells was only surety for said Mace, although the note was 'jointly and severally,' and had no interest or part in the debt. Said note was paid by said Wells on 6 March, A.D. 1844, being at that date the sum of one hundred and ninety-four dollars and eleven cents. Said Wells has kept both said notes since they were so taken up by him, and they are now in his custody."

"That after their signing of said last note, and before the payment of the same, but subsequent to the payment of the first by said Wells, said Mace duly obtained a discharge of his debts as a bankrupt in pursuance of the provisions of the Act of Congress passed August 19th, 1841, commonly called the 'Bankrupt Law.' Said Mace's certificate is dated March 22, 1843, a copy of which is annexed, and made a part of the case."

"It is agreed the court shall give the same effect to said discharge as if the same were specially pleaded."

"Now if the court shall be of the opinion that the plaintiff is entitled to recover on the foregoing facts, judgment is to be rendered

Page 48 U. S. 274

for him to recover of the defendant the amount of said notes, or either of them, as the court shall adjudge, and his cost -- if for both notes, the sum of \$248.93; if for the small note, \$45.12; if for the large note, only \$203.81; if for neither, then defendant to recover his cost."

"A. UNDERWOOD, *Defendant's Attorney* "

"J. W. D. PARKER, *Plaintiff's Attorney* "

At December term, 1844, on the foregoing case stated, the court rendered judgment for the plaintiff to recover of the defendant \$203.81 damages, and his costs. The defendant excepted to the opinion, and the case was carried to the Supreme Court of Judicature, where the judgment of the court below was affirmed.

A writ of error, issued under the twenty-fifth section of the Judiciary Act, brought the case up to this Court.

Page 48 U. S. 275

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

This case is brought before the court by a writ of error to the Supreme Court of the State of Vermont under the twenty-fifth section of the Judiciary Act of 1789.

Wells, as the surety of Mace, became bound in two joint and several notes, both of which were due before the passage of the Bankrupt Law in August, 1841. In July, 1841, Wells paid one of these notes. Mace was discharged under the bankrupt law on 22 March, 1843. In March, 1844, Wells paid the other note, and then sued Mace for the recovery of the money on both notes. The facts being submitted to the county court, judgment was entered for the plaintiff for the amount of the note last paid, which judgment was affirmed by the supreme court of the state.

The fourth section of the bankrupt law provides that a

"discharge

Page 48 U. S. 276

and certificate, when duly granted, shall in all courts of justice be deemed a full and complete discharge of all debts, contracts, and other engagements of such bankrupt which are provable under this act,"

&c.;

By the fifth section of the act it is provided that

"All creditors whose debts are not due and payable until a future day, all annuitants, holders of bottomry and respondentia bonds, holders of policies of insurance, sureties, endorsers, bail, or other persons having uncertain or contingent demands against such bankrupt shall be permitted to come in and prove such debts or claims under this act and shall have a right, when their debts and claims become absolute, to have the same allowed them"

&c.;

Wells, as surety, was within this section, and might have proved his demand against the bankrupt. He had not paid the last note, but he was liable to pay it, as surety, and that gave him a right to prove the claim under the fifth section. And the fourth section declares, that from all such demands the bankrupt shall be discharged. This is the whole case. It seems to be clear of doubt. The judgment of the state court is

Reversed.

ORDER

This cause came on to be heard on the transcript of the record of the Supreme Court of Judicature of the State of Vermont and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said Supreme Court of Vermont in this cause be and the same is hereby reversed with costs and that this cause be and the same is hereby remanded to the said Supreme Court of Vermont for further proceedings to be had therein in conformity to the opinion of this Court.