

Grove Vs. Brien

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Court : US Supreme Court

Decided On : 1850

Appeal No. : 49 U.S. 429

Appellant : Grove

Respondent : Brien

Judgement :

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Grove v. Brien

49 U.S. (8 How.) 429

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR

THE DISTRICT OF COLUMBIA AND COUNTY OF ALEXANDRIA

SYLLABUS

Where a manufacturer upon the upper waters of the Potomac shipped five hundred kegs of nails to Alexandria, taking from the master of the canal boat a receipt saying that the nails were "to be delivered to Fowle & Sons in Alexandria

for the use of Robert Gilmor of Baltimore," and on the same day sent a letter to the consignees advising them that the goods were consigned for the use of Gilmor, such delivery and bill of lading operated as a transfer of the legal title to Gilmor, who was in fact the consignor.

The effect of a consignment of goods generally is to vest the property in the consignee, but if the bill of lading is special to deliver the goods to A for the use of B, the property vests in B and the action must be brought in his name in case of loss or damage.

Therefore the kegs of nails in the hands of Fowle & Sons were not subject to an attachment by the creditors of the manufacturer; nor had Fowle & Sons any valid lien upon them for previous advances to him. The title to the nails had passed to Gilmor before they came into the possession of Fowle & Sons.

In this case, the manufacturer acted *bona fide* in the transfer of the goods for the purpose of securing a preexisting debt to Gilmor. This being so, there was no necessity for Gilmor's expressing his assent to the transfer in order to the vesting the title. The manufacturer was a competent witness.

This was a controversy respecting the right to certain kegs of nails which were in the hands of William Fowle & Sons in Alexandria.

On 14 March, 1843, the following was the position of the several parties who had any concern in the matter.

John McPherson Brien carried on an extensive iron concern upon the waters of Antieatam Creek in Maryland, near the Potomac River above Harper's Ferry. He was indebted to Robert Gilmor of Baltimore to Daniel L. Grove of Alexandria and to William Fowle & Sons of the same place. To the last-mentioned house he had been in the habit of sending nails from the foundry, and upon the preceding 21 February had written the following letter:

" *Antieatam, February 21, 1843* "

"MESSRS. WM. FOWLE & SONS:"

"Gentlemen -- Your account of sales &c., has been examined

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and found correct, and charges for your commission &c.; made in my books accordingly."

"The water I learn will be put into the canal in a day or two, when I shall embrace the first opportunity to forward you the nails you have ordered."

"Yours most respectfully,"

"JNO. McP. BRIEN"

In this state of affairs, Brien made a shipment by one of the canal boats and took the following receipt:

"Received, March 14, 1843, of John McP. Brien, 500 kegs of nails, to be delivered to William Fowle & Sons, Alexandria, D.C., for the use of Robert Gilmor, Esq., Baltimore, in good order."

"GEORGE H. SHARPLESS"

"FOR ISAAC SHARPLESS"

Upon the same day the following letter was written, which, it appeared by the testimony, was not mailed at Mr. Brien's post office, but brought down the canal by the boatman and mailed at Georgetown on the 20th. It was received by Fowle & Sons on the 21st.

"TO MESSRS. WM. FOWLE & SONS:"

"Gentlemen -- We have this day shipped on board of Capt. Sharpless' boat and consigned to you for the use of Robert Gilmor, Esq., Baltimore, 500 kegs nails, viz., 27 3 d ., 34 4 d ., 68 6 d ., 99 8 d ., 107 10 d ., 58 12 d ., 22 20 d ., and 17 30 d ., nails; 22 2 d ., 7 8 d ., and 15 10 d . brads; 10 8 d . and 12 10 d . fencing, which we hope will arrive in good order. You will please pay Capt.

Sharpless his freight, and oblige yours, respectfully,"

"JNO. McP. BRIEN"

"PER JAS. S. PRIMROSE"

"March 14, 1843"

Postmarked, "Georgetown, D.C., March 20"

Upon the preceding 23 January, Grove had filed a bill (the origin of all these legal proceedings) against Brien & Fowle & Sons stating that Brien was indebted to the complainant in the sum of \$1,089.50 and praying that an attachment might issue against his funds and effects in the hands of Fowle & Sons. As soon as the nails arrived, *viz.* on 20 March, the marshal served the attachment and subpoena.

It may be here stated that Gilmor obtained leave of the court to be made a defendant, and afterwards filed his answer and cross-bill.

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It is not necessary to state the progress of the suit through all its details. The parties all answered, and much testimony was taken, including that of Brien, which was objected to by the counsel for Grove. Proper parties were also made in place of some who had died.

Fowle & Sons, in their answer, set forth their previous dealings with Brien, the letter (above inserted) of 21 February, and claimed that Brien was indebted to them on account of prior transactions, for which balance so due they had a lien on the nails.

The answer of Gilmor and his cross-bill state substantially the same facts, and, after referring to the attachment of the nails in controversy by Grove, say that John McP. Brien was indebted to Robert Gilmor (besides other large indebtedness) in the amount of a draft for \$4,405.40, which was drawn by Brien on Gilmor and by him accepted, and at maturity paid by Gilmor, at the request and solely for the use

of Brien. That previous to the shipment of the said nails, it was agreed between Brien and Gilmor that Brien should ship to Gilmor the 500 kegs of nails on account of, and to be applied in part liquidation of, such preexisting debt.

It then proceeded to state the shipment and claimed the nails as his property.

The answer of John McP. Brien to the original and cross-bills neither admits nor denies his indebtedness to Grove, as charged in his original bill, but calls for proof. He states his indebtedness to Gilmor as alleged in the cross-bill, and admits that according to a previous agreement between himself and Gilmor and in consideration of such preexisting indebtedness, he shipped the 500 kegs of nails in controversy on 14 March, 1843, to the care of Wm. Fowle & Sons. That by letter dated 14 March, 1843, he advised said Wm. Fowle & Sons, that the said nails, a particular description of which is contained in the letter, were forwarded to them for the use of Robert Gilmor of Baltimore, and also enclosed them the receipt or bill of lading of the common carrier to whom the said nails were delivered which expressed that the same were shipped for the use of Robert Gilmor, and denies all fraud, combination &c.;

Grove answered the cross-bill stating his ignorance generally of the facts, calling for proof, and charging that the consignment for Gilmor's use, if made, was fraudulent &c.;

The result of the evidence in the suit may be stated to establish the debt of Brien to Gilmor, to Grove, and to Fowle & Sons, and the question was which creditor had the preference. The account of the sale of the nails was thus presented by Fowle & Sons.

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It will be perceived that their prior debt is not brought into the account.

image:a

On 31 October, 1846, the circuit court passed the following decree.

" *Final Decree* "

"And now here, at this day, to-wit, at a court continued and held for the district and county aforesaid, 31 October, 1846, came the parties aforesaid by their solicitors, and these causes being set for hearing, and coming on to be heard this 31 October, 1846, upon the original, amended, and cross-bills, demurrer, answers, general replication, depositions, exceptions, agreements of counsel, interlocutory decrees and orders, and other papers, and it appearing to the court that all the parties defendant to said original, amended, and cross-bills

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had duly answered the same, and the arguments of counsel being heard, the court doth order, adjudge, and decree, that the amount of sales by the defendants, William Fowle & Sons, of the nails in controversy, made under an order in these causes of May term, 1844, not having been excepted to be and the same is hereby confirmed. And the court proceeding first to decide upon the original bill filed by the complainant, Daniel L. Grove, doth adjudge, order, and decree that the resident defendants, William Fowle & Sons, had not, at the filing of the said original bill or at any time since, in their hands any property, effects, or money belonging to the said nonresident defendant, Jno. McP. Brien, and do further adjudge, order, and decree that said original bill be dismissed and that the said Daniel L. Grove do pay to the defendants thereto their costs in that behalf expended."

"And the court proceeding now to consider and decide upon the cross-bill, filed by the said Robert Gilmor in this cause, doth adjudge, order, and decree that the said Robert Gilmor recover of the said John McP. Brien the sum of four thousand four hundred and five dollars and forty cents, the amount of the draft in the said cross-bill mentioned, with interest thereon from the 4 March, 1843, till paid, to be credited, however, by the sum of one thousand eight hundred and twelve dollars and fifty cents as of 14 March, 1843; the said sum of \$1,812.50 being the gross amount of the sales of the said five hundred kegs of nails as shown by the account of sales of the said William Fowle & Sons above mentioned, and the court doth

further order and decree that the said William Fowle & Sons, out of the said one thousand eight hundred and twelve dollars and fifty cents, the proceeds of the sales of said nails in their hands, retain the sum of four hundred and thirteen dollars and fifty-four cents in discharge and payment of the freight on the shipment of said nails, for storage, insurance, commission on sales, and the other items of charge against the said nails set forth in their said account of sales; and the court doth further adjudge, order, and decree that the said William Fowle & Sons are not entitled to any lien on the said nails, or their proceeds, for the sum of \$334.60 claimed by them to be due as a general balance of account on previous transactions between them and the said John McP. Brien. The court doth further adjudge, order, and decree that William Fowle, William H. Fowle, and George D. Fowle, composing the firm of William Fowle & Sons, pay over to the said Robert Gilmor the sum of one thousand three hundred and ninety-eight dollars and ninety-six cents, being the balance of the sale of the

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said nails in their hands, after deducting the said sum of \$413.54 in manner aforesaid. And the court further adjudges, orders, and decrees that the said Robert Gilmor recover of the defendants to said cross-bill his cost against them in that behalf expended."

"From which decree the complainant, Grove, in the original bill and a defendant in the cross-bill prays an appeal to the Supreme Court of the United States, which is granted, upon his giving bond and security in the sum of \$2,500, to be approved by the court or one of the judges thereof."

Upon this appeal, the case came up to this Court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

This is an appeal from a decree of the circuit court of this district in which a bill was filed by the complainant for the purpose of enforcing the collection of a debt due

from John McP. Brien, a nonresident, out of goods belonging to him within the district, in the hands of William Fowle & Sons, the consignees. It was defended by Fowle & Sons on the ground that they had a lien upon the goods. They also set up that the property was claimed by R. Gilmor, a merchant in Baltimore. The bill was afterwards amended, making Gilmor a defendant, who answered, setting up his title to the property, and also filed a cross-bill against the complainant, Fowle & Sons, and Brien, setting forth the same title and praying that the proceeds, the property in the meantime having been sold, might be paid over to him. The defendants put in several answers to the bill, but upon the view we have taken of the case it is unnecessary to refer to them particularly.

The facts disclosed which it is material to notice are that Brien, being indebted to Gilmor, on 14 March, 1843, shipped to Fowle & Sons 500 kegs of nails, the property in question, for the purpose of securing such indebtedness, and took from the master of the boat the following receipt or bill of lading:

"Received, March 14, 1843, of John McP. Brien 500 kegs of nails, to be delivered to William Fowle & Sons, Alexandria, D.C., for the use of Robert Gilmor, Esq., Baltimore, in good order."

And on the same day sent a letter directed to the consignees advising them that the goods were consigned for the use of Gilmor, and which was received about the time of the arrival of the goods.

Upon these facts, the court below dismissed the original bill of complainant with costs and decreed the proceeds of the property to Gilmor, deducting freight and charges.

The case is here on an appeal by the complainant in the original bill.

We are of opinion that the decree of the court below was right, and should be affirmed.

The delivery of the goods by Brien to the master, and the bill of lading taken in the name of Gilmor, for the purpose of securing to him an existing indebtedness,

operated as a transfer of the legal title, and the shipment therefore was not only in

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fact but in judgment of law for and on his account. Gilmor was the consignor.

The effect of a consignment of goods generally is to vest the property in the consignee, but if the bill of lading is special to deliver the goods to A for the use of B, the property vests in B, and the action must be brought in his name in case of loss or damage. 3 Salk. 290; 1 Ld.Raym. 271; 3 Barn. & Ald. 382; 1 Binn. 109; Abbott on Ship. 216 and note; Long on Sales 293 (Boston ed.).

If the person to whom the goods are ordered to be delivered is only an agent of the shipper, he has no property in them, and cannot maintain an action against the master for not delivering them, Abbott 216; 1 Campb. 369, nor for damage for negligence of the carrier. 3 Barn. & Ald. 382. And if the goods are shipped at the risk of the consignor, though the freight is payable by the consignee, the property remains in the former. Abbott 216; 1 Johns. 229.

These cases and others that might be referred to show that the five hundred kegs of nails in the hands of Fowle & Sons were not subject to the attachment of the complainant for the liabilities of Brien, their debtor, as the title to the property had already passed to the defendant, Gilmor, and also that Fowle & Sons had no valid lien upon them as consignees for previous advances to Brien by the delivery to the master, as they were only agents to receive the goods on commission for sale and were advised by the bill of lading and correspondence that they were shipped for and on account of Gilmor. Though the goods were delivered by Brien to the master for consignment, they were delivered as the property of Gilmor and under circumstances, as we have seen, that had the effect to invest him with the title. His right therefore was prior in point of time to any lien that might have been acquired either by the complainant or Fowle & Sons in consequence of Brien's indebtedness, upon the strictest principles of law, and as to the equities it was but a race of diligence among the several creditors of a failing debtor to see which should get the first security for their debts.

An objection was made on the argument that there was no evidence that Gilmor had assented to the transfer of the property to him as security for his demand against Brien until after the levy of the complainant's attachment.

The original bill was amended, making him a defendant, and in his answer he sets up that the transfer was made in pursuance of a previous agreement between him and Brien in part liquidation of his indebtedness.

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We are inclined to think this part of the answer is responsive to the bill, and there is no evidence in the case contradicting it in this respect. Though the bill is brief and meager in the statement of the case which it presents, and has not incorporated in it the amendment making Gilmor a defendant, yet from the nature of the charge against him, and ground for making him a party, it would seem necessarily to call upon him to set forth his claim to the property in dispute.

But it is unnecessary to place the answer to the objection on this ground. In the absence of all evidence to the contrary, in case of an absolute assignment of property by a debtor to his creditor for the purpose of securing a preexisting debt, an assent will be presumed on account of the benefit that he is to derive from it.

This principle was recognized and applied by this Court in the case of [Tompkins v. Wheeler](#), 16 Pet. 106, and had been before in [Brooks v. Marbury](#), 11 Wheat. 96. No expression of assent, the Court said, of the person for whose benefit the assignment is made is necessary to the vesting the title, as the creditor is rarely unwilling to receive his debt from any hand that will pay him.

It was also objected that Brien was an incompetent witness for Gilmor, on the ground of interest; but it is apparent that he had no interest in the suit, for in any event the property would be applied to the discharge of debts against him, and whether in favor of one or the other was in point of interest a matter of indifference to him.

In any view, therefore, that can be properly taken of the case, we are of opinion the decree of the court below was right, and should be

Affirmed.

ORDER

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 now here ordered, adjudged, 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.

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