Brabston Vs. Gibson

Brabston Vs. Gibson

SooperKanoon Citation : sooperkanoon.com/80140

Court : US Supreme Court

Decided On : 1850

Appeal No. : 50 U.S. 263

Appellant : Brabston

Respondent : Gibson

Judgement :

Brabston v. Gibson - 50 U.S. 263 (1850)
U.S. Supreme Court Brabston v. Gibson, 50 U.S. 9 How. 263 263 (1850)

Brabston v. Gibson

50 U.S. (9 How.) 263

ERROR TO THE CIRCUIT COURT OF

THE UNITED STATES FOR LOUISIANA

SYLLABUS

Where promissory notes were executed in Louisiana, but made payable in Mississippi and endorsed in Mississippi, and the endorsee sues in Louisiana, the law of Mississippi, and not that of Louisiana, must be the law of the case.

By the law of Mississippi, where the endorsee sues the maker, the

"defendant shall be allowed the benefit of all want of lawful consideration, failure of consideration, payments, discounts, and setoffs made, had, or possessed against the same, previous to notice of the assignment."

Where the notes were originally given for the purchase of a plantation, which plantation was afterwards reclaimed by the vendor under the laws of Louisiana and the deed, and, in the deed of reconveyance made in consequence of such reclamation, the plantation remained bound for the payment of these notes, these facts do not show a "want of lawful consideration, failure of consideration, payment, discount, nor setoff," and consequently furnish no defense for the maker when sued by the endorsee.

The fact that the notes were endorsed *"Ne varietur"* by the notary, did not destroy the negotiability of the notes.

Ann Brabston was a citizen of Mississippi, and Gibson of Louisiana.

The facts in the case were somewhat complicated. There was a "case agreed" in the circuit court, which is inserted in this statement, but in consequence of a reference to long deeds, which are made a part of the case agreed, it may be proper to collect the facts stated in those deeds, and throw them into the form of a continued narrative.

The case was this.

On 16 May, 1837, William Harris a citizen of Mississippi, residing in Adams County in that state, became indebted to the heirs of Epheus Gibson, in the sum of $11,000, bearing eight percent interest till paid.

On 24 March, 1838, Harris purchased from Tobias Gibson, the defendant in error, who was then the owner of a plantation of 1,219 acres in the Parish of Concordia in Louisiana, and of twenty-four slaves thereon, an undivided moiety of the said plantation and slaves, whereby he and Gibson became tenants in common thereof.

On 11 March, 1839, Harris became indebted to the Agricultural Bank of Mississippi, in the sum of $25,272.02, for which he gave his two promissory notes to the said bank, both dated on that day, one of them for $6,398.55 payable on 1 February, 1840, the other of them for $18,873.47, payable on 1 April, 1840.

On 16 March, 1839, Harris executed a mortgage of his undivided moiety of the plantation and slaves purchased

Page 50 U. S. 264

from Gibson to the Agricultural Bank of Mississippi, to secure the payment of these two notes.

On 24 December, 1839, Harris executed a second mortgage of the same property to the heirs of Epheus Gibson, to secure the payment of the debt due to them.

On the 24 December, 1839, Harris and wife resold to Tobias Gibson the undivided moiety of the plantation and slaves subject to these two mortgages, for the sum of $70,000, which was to be thus paid by Gibson. He was to pay off the two mortgage debts in the following manner: the two notes held by the Agricultural Bank of Mississippi in four annual installments during the years 1840, 1841, 1842, and 1843; the debt to the heirs of Epheus Gibson in three annual installments during the years 1844, 1845, and 1846 which arrangement and postponement of payments by the bank and the heirs of Epheus Gibson Harris became responsible for; and for the balance of the $70,000 of purchase money, *viz.,* $29,510.79, he Gibson, gave Harris then being a citizen and resident of Mississippi four promissory notes, all dated at the Parish of Concordia, on 24 December, 1839, and payable at the Agricultural Bank of Mississippi, *viz.:*

One for $2,000, payable on the 1st of February, 1844.

One for $6,000, payable on the 1st of February, 1845.

One for $7,000, payable on the 1st of February, 1846.

One for $14,510.79, payable on the 1st of February, 1847.

But he, Gibson, was to have the liberty of extending the time of the payment of each note one year more, on payment of eight percent interest. The said four notes were each respectively marked *"Ne varietur"* by the parish judge, at the time of the act of sale, to identify the same therewith.

As security for the fulfillment of the terms of purchase, Gibson, in the act of sale, specially mortgaged and hypothecated, in favor of Harris the property so purchased, and he also covenanted that it was

"a sale in which the power or right of redemption was specially reserved in favor of the vendor Harris for the period of ten years from the date of the act of sale, to be by him exercised at any time within the said period of ten years, agreeably to the provisions of the laws of the State of Louisiana."

Those provisions are the following (Civil Code of Louisiana, 2031, 2545 to 2566):

" 2031. A sale may be made conditioned to be void, if the vendor chooses to redeem the property sold."

" 2545. The right of redemption is an agreement or petition, by which the vendor reserves to himself the power of taking back the thing sold by returning the price paid for it. "

Page 50 U. S. 265

" 2546. The right of redemption cannot be reserved for a time exceeding ten years."

" 2550. A person having sold a thing, with the power of redemption, may exercise the right against a second purchaser, even in case such right should not have been mentioned in the second sale."

" 2553. The person who purchases an estate under a condition of redemption has the fruits until the vendor exercises his right of redemption."

" 2565. The vendor who exercises the right of redemption is bound to reimburse to the purchaser, not only the purchase money, but also the expenses resulting from the necessary repairs, those which have attended the sale, and the price of the improvements which have increased the value of the estate."

" 2566. When a vendor recovers the possession of his inheritance, by virtue of the power of redemption, he recovers it free from any mortgages or encumbrances created by the purchaser, provided full possession be recovered within the ten years, as provided by 2546."

On 21 January, 1840, Harris then being a citizen an resident of Mississippi, executed a promissory note for what particular consideration does not appear, dated at Natchez, for $6,000, payable to Ann Brabston, the plaintiff in error, who was also a citizen and resident of Mississippi, twelve months after date, and delivered it to her there.

On the same day, Ann Brabston gave Harris a receipt, also dated at Natchez, acknowledging that she had received from him two of the above stated notes of Gibson, *viz.,* that for $6,000, payable on 1 February, 1845, and that for $7,000, payable on the 1st of February, 1846, "to be held by me as collateral security for the payment of the note of William Harris to me," executed the same day.

The endorsement, transfer, and delivery of these notes by and between Harris and Brabston, were made at Natchez, in Mississippi. The whole transaction was without any notice, knowledge, or consent, on the part of Gibson.

On 21 January, 1841, the note of Harris and Brabston for $6,000 as collateral security for which the two notes of Gibson of $6,000 and $7,000 were given to her became due; it was not presented for payment, renewed, or protested so far as appears; no notice thereof, or that the said note or that the two other notes were held by Brabston, was given to Gibson; and Brabston then was, and at all times since has continued to be, the holder of the note of Harris dated 21 January, 1840.

On 18 September, 1841, Harris claimed his right of redemption, and thereupon Gibson and wife reconveyed to him, by an authentic act, dated that day, all the property conveyed to him by Harris on 24 December, 1839, for the consideration of $70,000, which he acknowledges to have received in the manner following, *viz.,* it was recited in the said act of reconveyance, that the two mortgage debts to the Agricultural Bank of Mississippi, and to the heirs of Epheus Gibson, still remain unpaid; and Harris covenanted to assume the payment thereof himself, and to guarantee Gibson against any personal liability therefor; as to the remaining part of the said $70,000, *viz.,* the $29,510.79, for which Gibson had given his four promissory notes to Harris the first and last of them, those for $2,000 and $14,510.79, were actually surrendered and returned, and as to the remaining two, for $6,000 and $7,000, it was stipulated that

"they are not returned to the said Gibson at the passing of this act, but the said Harris hereby stipulates and guarantees the return and canceling of said notes; and, to secure the same, hereby specially mortgages in favor of said Gibson all the property"

then conveyed, with the growing crops.

On 8 November, 1841, Gibson produced before the Parish Judge of Concordia the two notes for $2,000 and $14,510.79; and the mortgage granted for the amount thereof was thereupon declared by the said judge to be so far annulled.

On the ___ of March, 1843, Harris was declared a bankrupt by a decree of the District Court of the United States for the Louisiana district, under the bankrupt law of the United States, and by further proceedings in that court obtained a final discharge and certificate.

On 14 February, 1846, Brabston commenced this suit against Gibson, in the Circuit Court of Louisiana, to recover the whole amount of the two notes in question, amounting to $13,000, with interest and costs.

The answer of Gibson was as follows:

"The Answer of Tobias Gibson to the Petition of Ann Brabston, exhibited against him in the court aforesaid."

"This defendant denies all and singular the matters and things set forth and alleged in plaintiff's petition, except such as are hereafter specially confessed and admitted. Defendant admits the execution of the two notes sued on, and that he signed the same and delivered them to William Harris to whose order they are payable, at the time of their execution. But defendant wholly denies that plaintiff is the owner thereof, or entitled

Page 50 U. S. 267

to sue thereon. Further answering, defendant states that both the notes sued on were executed and given to the said William Harris in sole consideration of the purchase, and for a part of the price, of one undivided half of a certain plantation, and certain slaves thereon, purchased by said defendant from said Harris on 24 December, 1839, which purchase, as well as execution and delivery of said notes, was evidenced by an authentic act of sale, passed before George W. Keeton, parish judge of the Parish of Concordia in this state, on the day and year last aforesaid, and a duly certified copy of which act is hereto annexed, and made a part of this answer."

"Defendant further alleges, that in said act of sale said vendor, Harris specially stipulated for and reserved to himself the right of redemption of the property so sold for the period of ten years from the date of said act, as will more fully appear by reference thereto, and said notes sued on were identified with said act, and marked *Ne varietur* by the parish judge, as appears upon their face, as also in said act."

"Defendant further alleges, that afterwards, to-wit, on 18 September, 1841, and long before the maturity of either of the notes sued on, the said William Harris claimed the right of redemption, so reserved by him in the act of sale above mentioned, and according to the stipulations and provisions set forth and contained in said act; wherefore, and in accordance with said claim by said Harris

and of the stipulations of said original act of sale, this defendant did, on said 18 September, 1841, at the Parish of Concordia, and in conjunction with his wife, Amanda Fletcher, by authentic act passed before James Dunlap, judge and *ex officio* notary public in and for said Parish of Concordia, resell and reconvey said property conveyed to him by said first-mentioned act to the said Harris according to the rights and claims of said Harris to redeem the same."

"And defendant further states, that by said last-mentioned act said Harris did, in part consideration thereof, cancel the two notes sued on, and wholly discharge and release defendant from all liability therefor; all of which will more fully appear by reference to an authenticated copy of said last-mentioned act, which is hereto annexed and made part of this answer."

"Defendant further states, that both said acts above mentioned were, upon their execution, respectively, duly recorded in the proper office. And so said defendant says that said notes, by virtue of said claim of the right of redemption, and of the reconveyance made in consequence thereof by this defendant and wife to said Harris and by virtue of the stipulations contained in said act of resale, and by operation of law, were

Page 50 U. S. 268

wholly discharged, and this defendant released from all liability therein."

"Further answering, defendant says that said notes sued on were not transferred to said plaintiff *bona fide* in the ordinary course of business, nor did she obtain possession thereof as owner, nor is she the owner thereof; but said notes were delivered to said plaintiff, and received and held by her, as collateral security for the payment of a certain note, drawn by said Harris and held by said plaintiff, for the sum of six thousand dollars, dated Natchez, 21 January, 1840, and payable twelve months after date; that said plaintiff has never instituted suit upon said last-mentioned note, nor made any attempt to enforce the collection of the same."

"Defendant further states that said notes were so deposited with said plaintiff, as collateral security as aforesaid, without his knowledge or consent, and in fraud of

his rights, and that he had no notice whatever that said plaintiff held said notes until long after his reconveyance to said Harris as aforesaid, nor until long after he had transacted with said Harris in relation to said notes as aforesaid, and had been wholly released and discharged therefrom."

"Defendant further states that said notes are payable in the State of Mississippi, and governed in their obligation and validity by the laws of said state, and that the transfer or pledge of said notes, made by said Harris to said plaintiff, as collateral security for the payment of his own note as aforesaid, was also made in the State of Mississippi, and is governed by the laws of said state. And defendant avers that by the laws of said State of Mississippi, upon the redemption of said Harris of the property, for a portion of the price of which said notes were given as aforesaid, and upon the release and discharge of said notes by said Harris as aforesaid, said notes were wholly satisfied and discharged, nor can said plaintiff, by the laws of said state, maintain any action thereon."

"Wherefore said defendant prays that plaintiff's claim be rejected, with costs &c.;, and that a jury trial be awarded in this case, and for all other relief."

When the cause came on for trial, the following case was agreed upon.

" *Case Agreed* "

" *ANN BRABSTON v. TOBIAS GIBSON"*

"1st. The defendant, Tobias Gibson, on 24 December, 1839, executed the promissory notes sued on in this

Page 50 U. S. 269

case, under the circumstances and for the consideration set forth in the deed of sale executed to him by the payee of said notes, William Harris a copy of which act or deed of sale is hereto annexed, and forms a part of this case, as also the said two notes, which are respectively marked A, B, and C."

"2d. On 21 January, 1840, the payee of the said two notes, William Harris being then the holder thereof, endorsed and delivered the same to Mrs. Ann Brabston, the plaintiff, as collateral security, to secure the payment of the said Harris' note to the said Ann Brabston, dated on the said 21 January, 1840, and payable twelve months after date, for the sum of six thousand dollars, and on the same notes mentioned in a receipt from the said Ann to the said Harris under date of the said 21 January, 1840, which is hereto annexed, and makes part of this case, and marked D."

"3d. On 18 December, 1841, the said defendant, Tobias Gibson, did reconvey to the said William Harris all the property mentioned in the act of sale from Harris to the said Gibson, of the date of 24 December, 1839, before mentioned and referred to, and took back and cancelled all the notes mentioned in said act of December, 1839, except the two notes now sued on, and in and by the said act reserved to himself a mortgage to secure him against liability on said two notes, as is set forth in said act of reconveyance, which is hereto annexed and marked E, and makes part of this case."

"4th. The plaintiff is now the holder of the note of the said Harris for six thousand dollars, dated 21 January, 1840, and payable twelve months after date, and which is the same note mentioned in the receipt from said plaintiff to said Harris of 21 January, 1840, before referred to and made part of this case, and the said note is now in the hands of the plaintiff and unpaid, and is hereto annexed and made part of this case and marked F."

"5th. The mortgage reserved by the defendant, Gibson, in the act of reconveyance from him to the said Harris of 18 September, 1841, to secure the return and canceling of the said two notes, is duly recorded and subsisting and unreleased, as appears by the certificate of the recorded hereto annexed, marked G, and made part of this case."

"6th. The payee of the said two notes, William Harris was, on the ___ day of March, 1843, declared a bankrupt by a decree of the District Court of the United States for the Louisiana District, under the bankrupt law of the United States, and

by the further proceedings in bankruptcy before said court has obtained his final discharge and certificate. "

Page 50 U. S. 270

"7th. Harris the payee, resides in the State of Mississippi, and the notes sued on were endorsed and transferred to plaintiff, and the receipt given by her therefor, made and executed by her at Natchez, in the State of Mississippi, in which state said notes are payable. If on this case, as herein stated, the law be for the plaintiff, then judgment to be entered for the said plaintiff for the sum of six thousand dollars, with ten percent per annum interest, from 21 January, 1840, till paid; and if the law be for the defendant, then judgment to be entered for the defendant."

"PRENTISS & FINNEY, *Defendant's Attorneys* "

"ROB. MOTT, *for Plaintiff* "

Upon this agreed case, the circuit court gave judgment for the defendant, Gibson; whereupon the plaintiff sued out a writ of error, and brought the case up to this Court.

Whilst the cause was pending, Ann Brabston died, and James M. Brabston, her administrator, was substituted in her place.

Page 50 U. S. 276

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

The action was founded on two promissory notes given by Tobias Gibson, and dated 224 December, 1839, in which he promised to pay to William Harris for value received,

Page 50 U. S. 277

at the "Agricultural Bank of the State of Mississippi," in one note, six thousand dollars, 1 February, 1845, and in the other, seven thousand dollars, 1 February,

1846. These notes were given in part consideration for a plantation and slaves in Louisiana, sold by William Harris to Gibson, to secure the payment of which and other notes a mortgage was executed on the property. The words *"Ne varietur"* were endorsed on the notes to identify them with the sale of the estate.

On 21 January, 1840, these notes were assigned, in the State of Mississippi, to the plaintiff, as collateral security for the payment of a note to her of the same date, given by Harris who was a citizen of Mississippi, for six thousand dollars, payable twelve months after date. In the sale of the above property there was reserved to the vendor a right to repurchase it within ten years; and it appears there was a redemption of the property at the price for which it was sold, and a reconveyance to Harris was executed on 18 September, 1841. Two notes on Gibson were given up as a part of the consideration for the repurchase, but the above two notes for thirteen thousand dollars, having been assigned by Gibson to the plaintiff, were not surrendered, but Harris agreed that they should be given up and cancelled, and a mortgage was executed on the property to indemnify Gibson against them. The first mortgage for the consideration money was cancelled. Harris became bankrupt, and took the benefit of the bankrupt act in 1843.

The cause was submitted to the court on the facts agreed, and a judgment was rendered for the defendant. On several grounds, the plaintiff asks the reversal of this judgment.

The notes were given in Louisiana, but they were made payable and endorsed in Mississippi; consequently they are governed by the law of Mississippi. The law of the place where a contract is to be performed, and not the place where it was executed, applies. The endorsement of a note subjects the endorser to the obligations imposed by the law where the endorsement was made.

It is contended that, under the law of Mississippi, the defendant is not bound. The law referred to is in Howard and Hutchinson's Digest 373, which declares that "all bonds, obligations, single bills, promissory notes, and all other writings for the payment of money or any other thing, shall and may be assigned by endorsement," &c.;, and the assignee may bring an action &c.;,

"and in all actions commenced or sued upon any such original bond, obligation, bill single, or promissory note, or other writing as aforesaid, the defendant shall be allowed the

Page 50 U. S. 278

benefit of all want of lawful consideration, failure of consideration, payments, discounts, and setoffs, made, had, or possessed against the same previous to notice of the assignment."

The only question in the case which can arise under this statute is whether the admitted facts constitute a defense to the action. The facts not being within the statute cannot be set up as a defense under it. They do not show "an illegal consideration, a failure of consideration, payment, discount, or set-off." There was no pretense of payment of these notes in the redemption of the property. They were declared to remain in force, and to be subject to extinguishment when obtained. The case cited, of *Parham v. Randolph,* 4 How.Miss. 453, was where the note was given for land, the title to which failed; the failure of the consideration was held a good defense against the note in the hands of an assignee. That case was clearly within the statute.

These notes, being negotiable, were assigned to the plaintiff, for a valuable consideration, without notice, prior to the act of redemption. That act being a voluntary one by Harris the assignor of the notes, it could in no respect prejudice the rights of his assignee. Under the laws of Louisiana, the right of redemption may be enforced against a purchaser of the thing liable to be redeemed, though that fact was not named in the second sale. And when a vendor recovers the possession of land, by virtue of the power of redemption, he takes it free of all encumbrances created by the purchaser.

But these principles can have no application to negotiable paper, though given for a thing purchased which the vendor may redeem. The purchaser who holds land or other property liable to be redeemed, reconveys the property only on the payment of the consideration money. And whether this payment be made by

returns of the notes given, in money, or in some other manner acceptable to the parties, cannot be material. In the present case, it seems, Gibson was content to take a mortgage on the property reconveyed, to indemnify him against the outstanding notes.

From the fact that the notes were not given up, and an indemnity against him having been taken, a jury might well presume that Gibson had notice of the assignment. But this was not important to the right of the assignee. She stands unaffected by the reconveyance. The endorsement of the words *"Ne varietur"* could have no effect on the notes which were payable in Mississippi, and which were endorsed to the plaintiff in that state. Nor could they have affected the negotiable character of the notes, had they been assigned in the usual

Page 50 U. S. 279

course of business in Louisiana. *Abat v. Gormley,* 3 La. 241.

These notes were assigned to the plaintiff, as collateral security, by Harris for the payment of his note for six thousand dollars, executed at the same time, which constituted a legal transfer of the notes, for the purpose stated. On the credit of these notes, it may be presumed, the plaintiff received the note of six thousand dollars from Harris.

If Gibson be considered as a guarantor, as contended, yet a notice was not necessary, as he received an ample indemnity against the six thousand dollars by the mortgage. But he was not a guarantor in any sense of that term. Harris assigned the notes as security, and, under the circumstances, he cannot complain of want of notice of his own default.

No demand of the notes, when due, at the Agricultural Bank of Mississippi, where they were made payable, was necessary. The action is against the marker of the notes, and if the money was in the bank, or if the party was there with the money to pay the notes on presentation, it is matter of defense, and consequently the demand at the bank need not be averred in the declaration, nor proved on the trial. This question was fully considered and decided in *Wallace v. McConnell,* 13 Pet.

136.

We think the judgment of the circuit court must be

Reversed, and the cause remanded to that court for further proceedings, conformably to this opinion.

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 Louisiana, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said circuit court 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 circuit court for further proceedings to be had therein in conformity to the opinion of this Court.