Barrow Vs. Reab

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Court : US Supreme Court

Decided On : 1850

Appeal No. : 50 U.S. 366

Appellant : Barrow

Respondent : Reab

Judgement :

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Barrow v. Reab

50 U.S. (9 How.) 366

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF LOUISIANA

SYLLABUS

No exception can be taken in this Court which was not moved below, or which does not appear in some way on the record below.

Formerly the laws of Louisiana did not allow interest on accounts or unliquidated claims, but now it is due from the time the debtor is put in default for the payment of the principal.

Reab was a citizen of Connecticut, and Barrow of Louisiana.

The facts in the case appeared by the record to be these.

On 5 February, 1845, Reab purchased at New Orleans from J. R. Conner, alleged to be the lawfully authorized agent of Barrow, 35,000 gallons of molasses at the rate of twelve and a half cents per gallon, to be delivered at Field's Mills on the Bayou Lafourche, said molasses being represented as the crops of two plantations owned by Barrow, one being called the Myrtle Grove Plantation and the other being called the Home Plantation or Home Place. At the time of purchase, Reab paid to Conner for Barrow five hundred dollars.

Conner gave an order upon Barrow for the molasses, to be delivered to Reab or order, who sent a William Patton for it. The overseer wrote upon the face of the order in pencil, "The molasses has all been shipped from Myrtle Grove and the Residence."

On 20 March, 1845, Reab brought an action in the circuit court against Barrow, claiming, for expenses of sending a vessel &c.;, and for the rise in the price of molasses, the sum of $3,755.07.

On 22 April, 1845, Barrow answered the petition by

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a general denial, and by denying specially that Conner was his agent.

In March, 1847, the cause came up for trial, when the jury found a verdict for the plaintiff for $3,000, with interest. Whereupon the court entered judgment against Barrow for the sum of three thousand dollars, with interest thereon at the rate of five percent per annum from judicial demand, 29 March, 1845, till paid; and the costs of suit.

In the course of the trial, the following bill of exceptions was taken.

"Be it remembered that on the trial of this cause, to-wit on 9 March, 1847, the plaintiff offered in evidence, attached to the deposition of William C. Patton, a written instrument in the words following:"

" Mr. R. Barrow, or manager, will deliver to Mr. Josiah Reab or order the molasses on Myrtle Grove, as well as the production of the Home Place, or Residence, said molasses to be delivered in casks, to be furnished by the purchaser at Field's Mills, and oblige &c.;"

"J. R. CONNER"

"Upon which was this endorsement:"

" Deliver to Mr. William Patton. JOSIAH REAB"

"Written on the face, by overseer of the defendant, in pencil:"

" The molasses has all been shipped from Myrtle Grove and the Residence."

"N. L. F. MUNROE"

"And after the evidence had been given to the jury by both parties, the defendant, through his counsel, requested the court to charge the jury that in order to recover damages for the alleged failure of the defendant to deliver the article sold by his alleged agent, as set forth in the plaintiff's petition, it would be necessary for him to show that a demand in writing or in one of the other modes prescribed by article 1905 of the Louisiana Code had been made upon him for the delivery of the article sold by the vendee or some person authorized, and that he had been put in default according to the terms of the said article 1905. Whereupon the court charged the jury that if they should be satisfied that there had been a sale and that the instrument aforesaid was a memorandum of the sale, with the endorsement of the vendee for the delivery of the thing sold, and that the same had been presented to the defendant or his authorized agent, such would be a demand in writing under the terms of the article 1905 of the Louisiana Code. "

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"To which opinion and charge of the court the defendant, through his counsel, excepted and prayed leave of the court that said exception be made of record, and that he have his bill of exception thereto, which leave was granted by the Honorable Court, and this, the bill of exceptions of the defendant to the said charge of the court, was then and there signed and sealed by the Honorable Court."

"[L.S.] THEO. H. Mc CALEB, *U.S. Judge* "

The defendant, Barrow, sued out a writ of error, and brought the case up to this Court.

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MR. JUSTICE WOODBURY delivered the opinion of the Court.

The plaintiff in error, in his argument, relies on two grounds for reversing the judgment below.

One is that the judge should have instructed the jury that they must be satisfied, when the demand was made, that a proper tender of the price was also made.

But on turning to the record it does not appear that any exception was taken at the trial for any omission of this kind. And it is a well settled practice, that no exception can be taken here which was not moved below or which does not appear in some way on the record below. *Garland v. Davis,* 4 How. 131, 45 U. S. 143 .

Besides this objection to the present ground assigned for a reversal, the presumption is that the judge in truth informed the jury that a proper tender or readiness to pay must be shown, unless waived by Barrow or the exception would have been taken there and would be spread on the record. Much more is this to be presumed as such tender or readiness was averred in the declaration, and its importance, therefore, was called to mind, as well as being recognized by the laws

of Louisiana. *Ferran's Adm'x v. Lambeth,* 11 La. 77, 101.

The other exception urged here is the allowance by the court of interest on the verdict. This allowance appears on the record, and was in conformity to the finding of the jury, which was "for three thousand dollars, with interest."

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To be sure, the laws of Louisiana once provided that "no interest shall be allowed on accounts or unliquidated claims." Code of Practice, No. 554; 4 Martin 620; 2 La. 580; 4 La. 129, 140; 8 La. 572. But on 20 March, 1839, this provision was repealed. Louisiana Acts, 15, 168; 2 La.Ann. 878. And the rule since established in article 1932 of the Civil Code is --

"In contracts which do not stipulate for the payment of interest, it is due from the time the debtor is put in default for the payment of the principal, and is to be calculated on whatsoever sum shall be found by the judgment to have been due at the time of the default."

This provision has in several cases in Louisiana been held to apply to transactions of this kind, settling the law now to be as the court below virtually adjudged -- namely that "sums due on contracts bear interest from judicial demand, though unliquidated." *Petrie v. Woffard,* 3 La.Ann. 562; *Porter v. Barrow, id.,* 140; and *Ryder v. Thayer, id.,* 149; *Sullivan v. Williams,* 2 La.Ann. 878; 3 Robinson 361; *Erwin v. Fenwick,* 6 Martin N.S. 230.

Such too seems to be the rule as to interest in some other states, resting on general principles. *Van Rensselaer v. Jewett,* 2 Comstock 135; *Enders v. Board of Public Works,* 1 Grattan 389. More especially has this been considered allowable in England as well as this country if, as here, interest be given as a part of the damages for a wrongful refusal to fulfill a contract. *Arnott v. Redfern,* 3 Bingh. 353; 2 Carr. & Payne 88; *S.C.* 1 Maule & Selw. 169; Doug. 376; *Noe v. Hodges,* 5 Humphreys, 103; Pet.C.C. 172; Cooke 445. But the general practice, where no statute or usage exists to the contrary, is not to allow interest on

unliquidated damages due in cases of ordinary contracts. *Anonymous,* 1 Johns. 315; 2 Penn. 652; Pet.C.C. 85, 172, 221; *Colton v. Bragg,* 15 East 223; 3 Gilman 626. Independent, however, of the rule elsewhere, the law in Louisiana must in this instance govern in respect to interest, and as we have before shown, it sustains the course adopted by the circuit court.

There was one formal exception taken below and set out on the record which has not yet been noticed. The defendant insisted that it was necessary for the plaintiff to show a demand in writing.

"Whereupon the court charged the jury that if they should be satisfied that there had been a sale and that the instrument aforesaid was a memorandum of the sale, with the endorsement of the vendee for the delivery of the thing sold, and

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that the same had been presented to the defendant or his authorized agent, such would be a demand in writing under the terms of the Article 1905 of the Louisiana Code."

"To which opinion and charge of the court the defendant, through his counsel, excepted."

But in the argument, this exception did not appear to be relied on, and could not be successfully, as the sale, by the evidence, seems to have been in writing, the order to receive the article sold in writing, and this order presented, and a refusal endorsed on it, in writing.

On the whole case, then, the judgment below must be

Affirmed with damages at the rate of six percent.

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 affirmed with costs and damages at the rate of six percentum per annum.