SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Bispham Vs. Price

Bispham Vs. Price

SooperKanoon Citation : sooperkanoon.com/80413

Court : US Supreme Court

Decided On : 1853

Appeal No. : 56 U.S. 162

Appellant : Bispham

Respondent : Price

Judgement :

Bispham v. Price - 56 U.S. 162 (1853)
U.S. Supreme Court Bispham v. Price, 56 U.S. 15 How. 162 162 (1853)

Bispham v. Price

56 U.S. (15 How.) 162

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SYLLABUS

In the settlement of complicated partnership accounts by means of an arbitrator, Bispham was charged with one-half of certain custom house bonds, which Archer, the other partner, was liable to pay, and which obligations had been incurred on

partnership account.

There was a reservation in the settlement as to certain liabilities, but this one was not included.

Archer's estate was afterwards exonerated from the payment of these bonds by a decision of this Court, reported is 50 U. S. 9 How. 83.

A bill cannot be brought by Bispham against Archer's executor to refund one-half of the amount of the bonds upon the ground that Archer had never paid it.

The reference to an arbitrator was lawful, and his award included many items which were the subject of estimates. It was accepted as perfectly satisfactory, and acquiesced in as such until long after the death of Archer.

No fraud or mistake is charged in the bill, and if an error of judgment occurred, by which the chance was overrated that the custom house bonds would be enforced against Archer, this does not constitute a ground for the interference of a court of equity.

The statute of limitations also is a bar to the claim.

The facts in the case are very fully stated in the opinion of the Court.

Page 56 U. S. 171

MR. JUSTICE CAMPBELL delivered the opinion of the Court.

Joseph Archer the testator of the appellee and the plaintiff Charles Bispham in June, 1828, provided for the extension of a partnership, which was existing between them, for a term of five years. The plaintiff was to form a connection with another house, and to remain at Valparaiso, on the Pacific coast, for the term, while Archer was to manage the affairs of the firm in the United States. During the latter years of this partnership, Archer formed a partnership connection with another firm, and went to Canton, in China. The partners agreed to be equally

concerned in the profit or loss of all their business, whether transacted on the coast of the Pacific, the United States, or elsewhere. At the termination of this partnership, one of the partners was as Valparaiso and the other at Canton. In April, 1834, Archer, then at Canton, signed a paper which declares that from "the long and repeated absence" of the partners from the United States "it is believed their accounts are in a State of confusion," and "in case of the death of either," "some difficulty might be experienced in the settlement." William Foster was therefore constituted "the joint agent" of the partners, "in the settlement of all accounts between them," and "that his decision shall be final and binding." This paper was countersigned in the November following by Bispham, and the authority of Foster confirmed. Twelve months after, November, 1835, Foster executed this authority, by a statement of the accounts between the parties ascertaining a large balance to be due to Bispham, and awarded and determined that it should be paid to him

"in liquidation and full settlement between them, of all matters, claims, and demands relating to, or growing out of the transactions of the firm so far as they are now known, ascertained, or believed to exist,"

and provided, that

"as liabilities might hereafter be established or ascertained or claims recovered received not then known to exist, the determination was not to embrace them, and especially any matter of such a character, contingent on the result of pending suits, was excepted from this adjustment of the affairs of the firm."

Before the execution of this power, Archer had returned to the United States, and the settlement was evidently undertaken by Foster at his urgent solicitations. For, contemporaneously with the settlement, he gave to Foster a stipulation, reciting that Foster having agreed to and ratified the final settlement of all accounts between the partners in relation to their business, that if it should happen that Bispham should, in his own name, object to this settlement, Foster is to be exempt

from all blame, and he binds himself "to abrogate said settlement, and open it for a new and final adjustment."

At the same time, he wrote a letter to Bispham, stating that he had hoped to have met him in the United States, but that as he was about to embark for China, there seemed little chance of "their meeting for a number of years." He had resolved, in conformity with the letter of Bispham, of the 13th May, this letter is not a part of the record, to make a settlement of Archer and Bispham's affair with William Foster as per statement, which he will forward, and he expresses the conviction that the settlement was made on liberal principles to Bispham. In this letter, after discussing various items of the account indicative of

Page 56 U. S. 173

liberality, and justifying others, he says,

"If there is anything in this settlement which does not meet with your approbation, I wish you to state it candidly to William Foster with your reasons, and let him, as your agent, appoint an arbitrator, and my father, as mine, will name another, and let them say what is just and right under all circumstances, embracing the gain allowed you, on the shipment of raw silk in settlement, and open the account anew for adjustment. If the settlement meets your approbation confirm it, under your own hand, and send it to me at Canton."

He promises, in this letter, to remit the balance against him from Canton.

A month later, he addresses a letter to Bispham, from England, in which he states that

"I wrote to our friend William Foster yesterday about our settlement, and have stated to him, that if you were not satisfied with it, I was perfectly willing to leave it to an arbitration. He will show you the letter, if you desire it. I want the business closed, for should you or I make a finish of our career in this world, it never could be settled with any degree of certainty."

What communications were made during the year 1836, or the first half of 1837, between the partners or their agent, do not appear. The 18th of August, 1837, twenty-one months from the date of Foster's statement, Bispham, at Valparaiso, addressed Archer a letter at Canton, in which he acknowledges the receipt of a bill on London for the ascertained balance, dated June, 1836, declares that the settlement, made by William Foster is "perfectly satisfactory," admits his responsibility for any unsettled claims which might be made, and concludes that "intending this letter as entirely exonerating you from any further claims from myself, heirs, or executors. I am yours, &c.;"

It appears from a particular averment in the bill of the plaintiff in this case

"that no liabilities have been established or ascertained growing out of transactions during the said partnership of Archer & Bispham for partnership accounts, or any payments on account of the same, other than those known to exist at the time of the settlement of the account of said Archer & Bispham by William Foster and that no claims had been received by Bispham, growing out of the transactions of the firm."

The record shows no other dealings between these partners during the life of Archer, who died in 1841. After his death, Bispham qualified as executor of his will, and acted for sixteen months, and was discharged upon his own petition.

The present controversy originates in the execution by Archer, in his individual name, of eight bonds to the United States for the payment of duties, as surety for James L. Mifflin, upon four of which William Foster was a co-surety. These bonds, by

arrangement, were debts of the firm. Mifflin having become insolvent, the bonds were not paid, and in 1829 judgments were rendered against the obligors jointly in favor of the United States by the Circuit Court of the United States at Philadelphia. In 1831, Foster petitioned for his discharge as an insolvent, which was granted in 1834. These liabilities are included in the settlement of 1835, under the title of

"statement of J. L. Mifflin's bonds, for which Archer & Bispham are liable." In the statement of the account, the bonds are enumerated, their dates, and the amount of principal and interest due upon them described. The share of William Foster notwithstanding his continued insolvency and the fact of his release, is deducted, and the balance divided between the partners.

From the balance found to be due on the accounting to Bispham from Archer his share of this liability is deducted. In the letter of November, 1835, to which we have referred, Archer says --

"During our absence, my father endeavored to effect a compromise with the government for Mifflin's bonds, and since my return I have also made an effort to do the same, but without effect, as the officers entrusted with such matters can make no abatement in the whole amount due with interest, unless the applicant produce all their books and papers, and affirm their inability to pay the whole amount. With these conditions I could not comply, and as there seems likely to be no benefit to us by longer delay, I have concluded to pay the amount. My father has funds enough of mine in his hands to pay the amount, which will be appropriated to that purpose as soon as he can realize them."

"You will observe, by the statement, that your proportion of the bonds has been deducted from the sum due you. I therefore absolve you from all claim for these bonds, your proportion having been paid to me in settlement."

No other explanation of the transaction is found in the record. These judgments were not paid to the United States during the lives either of Foster or Archer, nor since by Mifflin, who is the survivor of both.

Upon the death of Archer we learn, from the bill and answer, that the executor of Archer "at all times" claimed, and now claims, the exemption of the assets in his hands from the judgments, for the reason that the remedy at law was extinct, and that equity would afford none. This Court sustained that claim for reasons reported, 50 U. S. 9 How. 83.

This bill, in 1850, was a consequence of that decision. It charges that, in the settlement, it was assumed that the liability of Archer upon the bonds could be enforced by the United States, and on that assumption, the share of Bispham in the

liability was paid to Archer, and that the estate having been discharged without a payment, he is entitled to a return of his money. The bill does not claim that there was any want of information, or any mistake in reference to the state of the liability at the date of the settlement. The inference to be deduced from the age of the judgments, Foster's connection with a portion of them, and his discharge by the United States, the item for counsel fees in the accounts, the intimate relations of the plaintiff with Archer and with the estate of Archer, and the absence of all averment in the bill, either of error, ignorance, mistake or fraud -- is that accurate information of the judgments was possessed by all the persons connected with the settlement. The bill does not aver that these judgments were designed to be included in the reservation contained in the latter part of Foster's report; but the extract we have made from the bill evinces that this is a claim whose situation was known, and the relations of the partners to it at that time ascertained and adjusted. The evidence is satisfactory that this reservation did not include this liability, or any contingency in which it was involved. The statement of the liability in the accounts is particular and exact. The portion of each partner is determined with precision. Archer acknowledges to have received Bispham's share, and "absolves" him from further claim; while Bispham expresses his satisfaction with the whole result, and exonerates Archer from future responsibility. Whether we consider the averments in the pleadings, or the evidence, we must take the settlement as a sedate and deliberate adjustment of the affairs of the partnership, so far as they were ascertained and could be made the subject of an arrangement.

The design of the settlement was to extricate the affairs of the partners from the complication, uncertainty, and confusion in which they were involved. They had been engaged in distinct partnerships, carrying on business in different continents, apparently disconnected, and having but little opportunity even of correspondence.

They had the prospect before them of a longer separation, and of diminished intercourse. Their partnership had ended. The ordinary mode of liquidating, after a dissolution, could not be followed. These partners, under these circumstances, and to attain their ends, consequently agreed to a reference of their accounts to a mutual friend, and clothed him with authority to make a final and binding decision. Was this lawful?

In *Knight v. Marjoribanks,* 11 Beav. 322, affirmed on appeal, 2 Mc. & Gord. 10, the master of the Rolls, after stating the usual course on a dissolution, said

"It is lawful for partners to deal with each other in quite a different way, if they think proper.

They may lawfully rely on the stock-takings, valuations, and accounts which appear in the books, and the accounts kept in the manner known to, or acquiesced in, by the partners. The stock-takings and valuations will be more or less accurate, according to the nature of the business and the property employed or engaged in the concern. It would in many cases be absurd to expect perfect accuracy, or to conclude that a transaction between partners, founded on statements appearing on the valuations and accounts stated in the books, could be set aside on the ground of some subsequent discovery of unintentional inaccuracy. When a question arises, you must in each case look to the circumstances."

In that case, the seat of the partnership was Van Diemen's Land. The partners resided in London, having no personal knowledge of the business and dependent upon the reports of agents, coming at distant intervals and received several months after their date. A sale of the share of one partner to another was impeached for inadequacy of price, error, and fraud. The Master of the Rolls said

"These parties, situated as they were, might fairly and honestly deal with each other with respect to the share of anyone, notwithstanding the ignorance in which they were as to the exact value. After all inquiry which can be made with respect to matters of this kind, the question of value becomes comparatively immaterial if

there was no deception, no misrepresentation or fraud, no unfairness."

In the case before us, entire accuracy is not to be looked for. Bispham is credited with proportions of profit arising from "unfinished business," and is charged with proportions of "estimated gains." There are items, which Archer pointed to as debatable, which he had conceded, and there are allowances to him, which might be considered as narrow. He regarded the settlement as a liberal one to Bispham. He asked its acceptance as a whole, "to close the business," and provided for an arbitration if this was refused. There was not haste in the acceptance, but ample time employed for inquiry. After this, it was accepted as "perfectly satisfactory," and acquiesced in as such until long after the death of Archer.

We cannot infer mistake or error under these circumstances. We adopt the language of Chancellor Walworth, 4 Paige 481, "that the practice of opening accounts, which the parties who could best understand them have themselves adjusted, is not to be encouraged," and "the whole labor of proof lies upon the party objecting to the account, and errors, which he does not plainly establish, cannot be supposed to exist."

In the absence of mistake or fraud, does there arise an equity in favor of the plaintiff by the averment that it was assumed in

Page 56 U. S. 177

the settlement that there was a liability against Archer which the United States might, at all times and under all circumstances, enforce, and on this alone the money was paid to him or allowed to him in settlement?

In the able argument submitted to us for the plaintiff, this assumption is treated as the motive to the contract, that which constitutes its obligation -- in one word, its consideration. If this assumption had been so comprehensive and had entered so thoroughly into the inducements to the contract, the consequence might follow, but the argument is not supported by the evidence. The parties certainly assumed there existed an imminent liability over the firm which the United States could enforce against Archer, and for which it was prudent to provide.

Bispham, entertaining this opinion, by making a payment to the United States on the judgments to the extent of his share would have been absolved from the claim either of the United States or of Archer. The United States having made no contract except with Archer, and Bispham being liable only through him, might liberate himself by a payment to Archer instead of the United States. This he accomplished.

It may be that neither party reckoned upon the neglect of the government officers about the collection of the debt, nor weighed the consequences of the death of Archer upon the binding efficacy of the judgments, but these were within the provisions of both of the parties to the contract, and its terms might have been moulded to secure the rights of each according to such circumstances. This Court has no competency to supply a providence which the parties to the contract withheld. The corpus of this portion of the contract, a debt obliging Archer, and through him affecting the partnership, the collection of which could have been enforced and which both parties had the right to assume would be enforced, had an unquestionable existence. If there was an error, it was in overlooking the fact that there were some contingencies in which the debt might be extinguished as to Archer without the payment of money, and in making no provision for these.

An error of this nature, if it were plainly proven to exist, could not be regarded as a ground for equitable relief.

The case of *Okill v. Whitaker,* 1 De Gex & Smale 83, 2 Phil. 338, was one in which premises had been sold and enjoyed for several years upon a contract for the sale of the residue of a term, both parties expressly contracting and settling the price on the belief that eight years only remained unexpired. Upon the discovery that there were twenty years, a bill was filed for relief. The Vice-Chancellor complained of the delay of the suit until after the death of the purchaser,

wherefore "those who had to administer justice between the parties were deprived of all the assistance and information he could give if he were living." He said that

the only reasonable ground upon which the bill could be treated was as a bill to rescind the entire contract upon the alleged mistake, and adds

"that for the present purpose it is not too much to say, that it was their duty to know what was the state, what was the condition of the property they had to sell."

The Lord Chancellor said that the only equity presented was "that the thing turns out more valuable than either party supposed."

The nature of this settlement and the motives presented in the correspondence concerning it would render it impossible for the court to modify one portion and to leave the rest in force. It was presented to Bispham as a settlement made on liberal principles, with the option to accept it as it was or to reject it altogether.

Without the benefit of the information and assistance that Archer and Foster might give, after so long an acquiescence, the case must be brought clearly within the limits in which courts of equity are accustomed to interfere to justify such a decree. This has not been done. But if we could doubt upon the intrinsic equities of the parties, the statute of limitations affords a conclusive answer to the bill. The bill and the answer agree that this item of the account was ascertained and stated, and that all the liabilities of the firm were practically adjusted by this settlement. The amount of the liability of Bispham was credited to him, and he received the "absolution" of Archer from all further claim. The exception in the Pennsylvania statute in favor of merchants' accounts, according to numerous authorities of the state courts, does not apply to the accounts of partners *inter sese,* though this is not universally admitted. 1 Robin.Va. 79; 10 Pick. 112; 6 Monroe 10. 4 Sand. 311 (*contra*). But however the law may be as to open accounts, the settled doctrine of the Court is that the exception in the statute does not apply to stated accounts. *Spring v. Grey,* 6 Pet. 151; *Toland v. Sprague,* 12 Pet. 300.

If we regard this money as a deposit in the hands of Archer, to be applied to a specific object, or to abide the action of the government against him, in either case the statute would afford a bar. The assumpsit in the one would be to pay the money in a reasonable time, and a cause of action would accrue upon a neglect of

this duty. *Foley v. Hill,* 1 Phill. 399; *Brookbank v. Smith,* 2 Y. & Co.Ex. 58; 13 Barb. 632; 11 Ala. 679; 4 Sand. 590.

In the other case, the liability of Archer was determined at

Page 56 U. S. 179

his death, and the right of the United States then extinguished. The facts were all known at that time, and the executor of Archer appreciated accurately the legal value of the facts, for the bill avers and the answer admits that he uniformly repelled the claim of the United States, and denied its validity. It is clear, therefore, if Bispham had placed this money to abide the issue of these obligations, the right to reclaim it arose at the death of Archer. *Calvin v. Buckle,* 8 M. & W. 680; *Maury v. Mason,* 8 Port. 211.

Our views upon this statute correspond with those expressed by the Supreme Court of Pennsylvania. *Hamilton v. Hamilton,* 18 Penn.St. 20; *Porter v. School Directors, ibid.,* 144.

Upon the whole case, we conclude there is no error in the record, and that the decree 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 Eastern District of Pennsylvania, 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.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com