Hecklers Vs. Fowler

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Court : US Supreme Court

Decided On : 1864

Appeal No. : 69 U.S. 123

Appellant : Hecklers

Respondent : Fowler

Judgement :

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Hecklers v. Fowler

69 U.S. (2 Wall.) 123

ERROR TO THE CIRCUIT COURT FOR

THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

1. A declaration in covenant by a patentee, setting out a sealed contract by defendant to pay him a certain tariff in consideration of an exclusive right to use the patent within a certain district is good.

2. The practice of referring pending actions under a rule of court to arbitrators appointed by the court with the consent of both parties is a mode of prosecuting a suit to judgment as well established and as fully warranted as a trial by jury.

3. A reference to hear and determine all the issues in a case does not require the referee to *report* his finding in all. It is answered by his hearing and determining all and reporting the result.

4. A judgment in the circuit court, entered by the clerk without objection upon the report of the referee and pursuant to order of court and the agreement of parties, is valid and can be enforced.

John Fowler brought suit in the Circuit Court for the Southern District of New York against John and George Heckers to recover damages for a breach of covenant. The declaration alleged that the plaintiff, who was the patentee of an improvement in making flour, had granted to the Heckers the right to supply a particular district with such flour &c.;, paying so much per barrel. Defense, that the patent was worthless, and that the plaintiff had failed to maintain its validity at his own cost, as he had agreed to do. Replication, issue, and joinder. While the case was thus pending, the attorneys of the parties agreed to refer it to a

"referee to hear and determine the same and all issues therein, with the same powers as the court, and that an order be entered making such reference, and that the report of said referee have the same force and effect as a judgment of said court."

One of the judges accordingly

"Ordered that the cause be *referred* to H. Cramm, Esq., to hear and determine *all the issues herein,* with the fullest powers ordinarily given to referees, and that on filing the report of the said referee with the clerk of the court, judgment be entered in conformity therewith the same as if the cause had been tried before the court."

The referee heard the case, and without stating what his findings were upon any of the several issues presented in the pleadings, made

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the finding, simply and generally, that there was due to plaintiff, John Fowler, from the defendants, John and George Heckers, the sum of $9,500, besides costs, all which he "reported" to the court. On this, the attorneys of Fowler drew up the form of a judgment, and without the presence or action of the court except the order of reference already alluded to, filed it with the clerk, who thereon entered judgment as a judgment of the court for the amount reported, with costs. The defendant took this writ of error.

It is necessary here to state that, by the Code of New York, [Footnote 1] a referee is clothed with the attributes of a judge. A trial by him is to be conducted in the same manner as a trial by the court; he may grant adjournments, allow amendments, compel the attendance of witnesses. His decisions may be excepted to and revised as in cases of appeal from courts of record. It is also enacted, that

"the report of the referees upon the whole issue shall stand as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. "

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MR. JUSTICE CLIFFORD delivered the opinion of the Court.

This is a writ of error to the Circuit Court of the United States for the Southern District of New York.

Suit was brought in this case by the present defendant, and judgment was rendered in his favor in the court below. Action was referred, under a rule of court, by consent of the parties, and the judgment in the case was rendered upon the report of the referee, made in pursuance of the rule of reference. Original defendants sued out this writ of error, and now seek to reverse the judgment upon the several grounds hereinafter mentioned. Errors assigned at the argument were

in substance and effect as follows:

1. That the declaration and the matters therein contained are not sufficient in law to enable the plaintiff to maintain the action.

2. That the circuit court erred in passing the order that the action should be referred, and that the matters in controversy should be heard and determined by a referee.

3. That the action of the referee was erroneous because he did not determine all or any of the issues involved in the pleadings.

4. That the judgment set forth in the transcript is invalid, and not such a one as can be enforced in the circuit court of the United States.

1. First objection was not much pressed at the argument and is entirely without merit, as will be obvious from a brief examination of the record. Plaintiff was assignor and patentee of a certain invention, described as a new and useful improvement in the preparation of flour for the making of bread, and the substance of the declaration was that the defendants, in consideration that the plaintiff had granted to them the exclusive right to supply a certain district with such prepared flour, and to manufacture and vend therein the patented ingredients used in the preparation of the same, promised to account with and pay over to the plaintiff a certain tariff for every barrel of flour so supplied and for the patented ingredients, when manufactured and sold separately, to be used in its preparation. Agreement was in

writing and under seal, and the action was covenant broken to recover damages for the neglect and refusal to account and pay the tariff according to the terms of the contract. Pending the suit, the defendants appeared and pleaded to the merits. They made no objection to the declaration, and if they had it must have been overruled, as it is in all aspects sufficient and well drawn.

2. Substance of the second objection is that the circuit court erred in allowing the reference. Defense, among other things, was that the plaintiff agreed to maintain the validity of the patent at his own expense during the period the defendants should be engaged in the business, and that he neglected and refused so to do, and that the patent was invalid and worthless. Replication of the plaintiff reaffirmed the facts set forth in the declaration and tendered an issue to the country, which was duly joined by the defendants. Pleadings being closed, the parties agreed in writing to refer the cause to a referee

"to hear and determine the same and all the issues therein, with the same powers as the court, and that an order be entered making such reference, and that the report of the referee have the same force and effect as a judgment of the court."

Following that agreement is the order of the court allowing the reference, which is the subject of complaint. Recital of the record is that on reading and filing the agreement, "the court ordered that the cause be referred" to the referee therein named, to hear and determine all issues therein with the fullest powers ordinarily given to referees, and that on filing the report of the said referee with the clerk of the court, judgment be entered in conformity therewith the same as if said cause had been heard before the court, and the attorneys of the parties annexed their consent in writing to the order.

Intention of the court and of the parties was to refer the action, and the requirement of the referee was that he should hear and determine the matters in controversy and make his report to the court in which the action was pending. Defendants insist that such a reference of a pending suit in

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the circuit court of the United States is invalid because such courts have no power to authorize such a proceeding. Such is the substance of the several propositions submitted by the defendants on this branch of the case. They admit that the state courts have such powers, but insist that the power is derived from statute, and that the circuit courts cannot exercise it, because there is no act of Congress which

confers any such authority.

Where the United States are plaintiffs, or an alien is a party, or the suit is between a citizen of the state where the suit is brought and a citizen of another state, the circuit courts of the United States have original cognizance, concurrent with the courts of the several states, of all suits of a civil nature at common law or in equity where the matter in dispute exceeds, exclusive of costs, the sum or value of five hundred dollars. Record shows that the plaintiff was an alien and that the defendants were citizens of the state where the suit was brought. Amount in dispute exceeds the sum or value of five hundred dollars, and inasmuch as the suit was of a civil nature at common law, the jurisdiction of the court was clear beyond cavil. [Footnote 2]

Scope of the objection, however, does not directly involve the question of jurisdiction, but has respect to the mode of trial as substituting the report of a referee for the verdict of a jury. Circuit courts, as well as all other federal courts, have authority to make and establish all necessary rules for the orderly conducting business in the said courts, provided such rules are not repugnant to the laws of the United States. Practice of referring pending actions is coeval with the organization of our judicial system, and the defendants do not venture the suggestion that the practice is repugnant to any act of Congress. On the contrary, this Court held in the case of the *Alexandria Canal Co. v. Swan* [Footnote 3] that a trial by arbitrators, appointed by the court with the consent of both parties, was one of the modes of prosecuting a suit to judgment as well established and as fully warranted

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by law as a trial by jury, and in the judgment of this Court there can be no doubt of the correctness of that proposition.

Doubts were nevertheless entertained whether a bill of exceptions would lie to the ruling of the circuit court in overruling the objections filed by the losing party to the acceptance of the report or award of a referee appointed under a rule of court:

York & Cumberland R. Co. v. Myers. [Footnote 4] Opinion of the Court in that case shows that the action, at the time of the reference, was pending in the Circuit Court of the United States for the District of Maine. Myers brought the suit, and the parties, before trial, agreed to refer the action to three persons to be appointed by the court. Presiding justice named three persons as referees, and the rule issued by the clerk provided that their report, or the report of a majority of them, "was to be made to the court as soon as may be, and that judgment thereon was to be final, and execution to issue accordingly." Subsequently one of the persons so appointed was, with the leave of the court, authorized by the parties to sit alone, and he made a report awarding damages to the plaintiff.

Corporation defendants, when the report was made, submitted written objections to the acceptance of the same and examined the referee in support of the objections. Question presented was whether the report should be accepted or rejected, but the circuit judge overruled the objections, accepted the report, and rendered judgment for the plaintiff for the amount reported by the referee. Defendants excepted to the rulings of the court and sued out a writ of error to reverse the judgment. Preliminary objection in this Court was that the bill of exceptions would not lie because the proceedings, as it was insisted, had been irregular, but this Court held otherwise and decided the cause upon the merits. Conclusion of the Court was that the equity of the statute, allowing a bill of exceptions in courts of common law, embraces all such judgments or

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opinions of the court arising in the course of a cause as are the subjects of revision by an appellate court, and which do not otherwise appear on the record. [Footnote 5]

Subordinate tribunal, said the Court, must ascertain the facts upon which the judgment or opinion excepted to is founded, which undoubtedly is correct for the reason there given, that this Court cannot determine, in cases at common law, the weight or effect of evidence, nor decide mixed questions of law and fact. Allusion is then made to the fact that appellate courts in other jurisdictions are accustomed

to revise such judgments and opinions, and the Court said,

"Upon principle, we can see no objection to the introduction of the same practice into the courts of the United States under the limitations we have indicated."

Taken as a whole, that case is decisive of the question under consideration. But it is a mistake to suppose that the practice referred to was first sanctioned in this Court by the opinion in that case. Ample authority for it is to be found in a decision of this Court pronounced more than forty years before the question in that case was argued. Reference is made to the case of *Thornton v. Carson,* [Footnote 6] in which the opinion was given by Chief Justice Marshall. statement of the case shows that two pending actions were referred by consent under a rule of court. Arbitrators made an award. Effect of the award was that the defendant was to pay to the plaintiff (Carson) the amount of the bonds in suit unless by a certain day he made a conveyance to the plaintiff of the property described in the award, in which latter event he was to receive from the plaintiff a transfer of certain shares in a mining company and to be discharged from the payment of the money, an entry to that effect to be made in the suits. Defendant failed to perform the act which would entitle him to such an entry in the case, and consequently became liable to pay the sums awarded by the referee. Oral

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objections were made to the acceptance of the award, but the court overruled the objections and rendered judgment for the plaintiff on the award for the amount of the money awarded. None of the evidence introduced when the award was accepted appeared in the record, and no bill of exceptions was tendered to the ruling of the court, but the defendant removed the cause into this Court by a writ of error. Under those circumstances, this Court refused to revise the rulings of the circuit court, but, in disposing of the case, the Court said if he, the original plaintiff, failed to do that which warranted the court in entering judgment on the award, it was the duty of the complaining party to have shown that fact as a cause against entering judgment, and to have spread all the facts upon the record, which would enable this Court to decide whether the court below acted correctly or not. Various

other objections were also taken to the proceedings, but they were all overruled and the judgment was affirmed. Similar views have been expressed by this Court on other occasions, but it is not thought necessary to do more than to refer to the other cases, as those already examined are believed to be decisive. [Footnote 7]

Practice of referring pending actions under a rule of court by consent of parties was well known at common law, and the report of the referees appointed, when regularly made to the court pursuant to the rule of reference and duly accepted, is now universally regarded in the state courts as the proper foundation of judgment. [Footnote 8]

3. Third objection is that the action of the referee was erroneous because he did not determine all of the issues between the parties. Evidently the objection is founded in

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a mistaken view of the duty of the referee as prescribed in the rule of reference. He was not required either by the agreement of the parties or by the order of the court to report specially what his finding was upon the several issues presented in the pleadings. His duty was to determine all the issues and to report the result of his finding. Referee reported that, having heard and examined the matters in controversy in the cause and having examined on oath the several witnesses produced, there was due to the plaintiff the sum of nine thousand and five hundred dollars, besides the costs of suit. Presumption is that he did determine all the issues, and inasmuch as there was no evidence to the contrary, the conclusion must be to the same effect.

4. Fourth objection is that the judgment is invalid and cannot be enforced. Defect suggested is that the judgment was rendered by the clerk, and not by the court, but the record, when properly understood, does not sustain the objection. Judgments are always entered by the clerk under the authority of the court. Prevailing party is entitled to judgment, and it is not the practice in the circuit

courts to require a rule for judgment to be entered in any case, as is the practice in some of the courts in the parent country. [Footnote 9] Entry of judgment in term time is never made except by leave of court, but the motion need not be in writing, and the order of the court is seldom or never entered in the minutes. When the term closes, judgments are entered by the clerk under the general order without motion, and yet no one ever doubted that a judgment entered under such circumstances was the act of the court, and not of the clerk. Reference of a pending action is ordinarily perfected in term time by an entry made under the case by the clerk, at the request of the parties, that it is "referred," and with the addition of nothing else except the names of the referees, or it may be done, as it was in this case, by a written agreement, signed by the parties or their attorneys, and filed in the case. When that is done, a rule is then issued, or the

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order of the court may be entered in the minutes, as was done in this record. Duty of the referee is to notify and hear the parties and then to determine the controversy and make a report or award to the court in which the action is pending and from which the rule was issued. Judgment, however, cannot in general be entered in conformity to the report or award until it is accepted or confirmed by the court. [Footnote 10] Reason for the rule is that whenever it is presented and before it is accepted, the party against whom it is made may object to its acceptance; but if required by the court, he must reduce his objections to writing and file them in the case. Hearing is then had, and after the hearing the court may accept or reject the report, or, if either party desires it, the report may, for good cause shown, be recommitted. Such a report of referees is in many respects a substitute for the verdict of a jury. Where there is no agreement to that effect, no judgment can be entered on such a report until the same has been accepted. Present case, however, must be determined upon the peculiar circumstances disclosed in the record. Parties agreed that the report of the referee should have the same force and effect as a judgment of the court, and the court ordered, by consent of parties, that on filing the report with the clerk of the court, judgment should be entered in conformity therewith the same as if the cause had been tried

before the court. Referee accordingly made the report and filed it as required, and thereupon the clerk entered the judgment pursuant to the order of the court and the agreement of the parties. Proceedings of the referee were correct, and the losing party made no objections to the report. [Footnote 11] Judgment having been entered without objection, and pursuant to the order of the court and the agreement of the parties, it is not possible to hold that there is any error in the record. [Footnote 12]

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Theory of the objection is unfounded in fact, and upon that ground it is overruled. The judgment of the circuit court is therefore,

Affirmed with costs.

[Footnote 1]

272.

[Footnote 2]

1 Stat. at Large 78.

[Footnote 3]

46 U. S. 5 How. 89.

[Footnote 4]

59 U. S. 18 How. 246.

[Footnote 5]

Strother v. Hutchinson, 4 Bingham's New Cases 83; *Ford v. Potts,* 1 Halsted 388; *Nesbitt v. Dallam,* 7 Gill & Johnson 494.

[Footnote 6]

11 U. S. 7 Cranch 596.

[Footnote 7]

Carnochan v. Christie, 11 Wheat. 446; *Luts v. Linthicum,* 8 Pet. 176; *Butler v. Mayor of N.Y.,* 7 Hill 329; *Ward v. American Bank,* 7 Metcalf 486; *Water Power Co. v. Gray,* 6 *id.* 174.

[Footnote 8]

Yates v. Russell, 17 Johnson 468; *Hall v. Mister,* Salkeld 84; *Bank of Monroe v. Wadner,* 11 Paige 533; *Green v. Palshen,* 13 Wendell 295; Caldwell on Arbitration 359; *Feeler v. Heath,* 11 Wendell 482; *Graves v. Fisher,* 5 Me. 70; *Miller v. Miller,* 2 Pickering 570; *Com. v. Pejepsent Proprietors,* 7 Mass. 417, 420.

[Footnote 9]

2 Tidd's Practice, p. 903; Archbold's Practice by Chitty 521.

[Footnote 10]

Brown v. Cochran, 1 N.H. 200.

[Footnote 11]

Hughes v. Bywater, 4 Hill 551.

[Footnote 12]

Bank of Monroe v. Widner, 11 Paige 533.