Lovejoy Vs. Murray

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Decided On : 1865

Appeal No. : 70 U.S. 1

Appellant : Lovejoy

Respondent : Murray

Judgement :

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Lovejoy v. Murray

70 U.S. (3 Wall.) 1

ERROR TO THE CIRCUIT

COURT OF MASSACHUSETTS

SYLLABUS

1. A bond of indemnity given by a plaintiff in an attachment to induce the officer to hold, after levy, property not subject to the writ makes such plaintiff a joint trespasser with the officer as to all that is done with the property afterwards.

2. A judgment against one joint trespasser is no bar to a suit against another for the same trespass. Nothing short of full satisfaction, or that which the law must consider as such, can make such judgment a bar.

3. A plaintiff in attachment who indemnifies the attaching officer, and afterwards takes upon himself the defense when that officer is sued is concluded by the judgment against that officer where such plaintiff is afterwards sued for the same trespass.

Lovejoy brought suit in one of the courts of Iowa against O. H. Pratt, and the sheriff attached certain personal property which *was assumed to be the property of Pratt.* A certain Murray, however, claimed it as his. The sheriff, now in possession, was unwilling to proceed further in the attachment or to sell the property under it unless indemnified by Lovejoy & Co. These parties accordingly executed a bond, in which, reciting that the sheriff *had* attached and taken possession of the property, they bound themselves to pay all damages &c.; The sheriff then proceeded to sell the property under Lovejoy & Co.'s attachment and under direction of their attorneys.

This being done, Murray sued the sheriff for an alleged trespass. The sheriff gave notice of this suit, as soon as

brought, to Lovejoy & Co., and they defendant it, counsel, whom they paid, having taken exclusive charge of it. In this suit, Murray obtained

Judgment against *the sheriff* for $6,233

Which the sheriff, *without execution issued,*

satisfied to the extent of 830

Leaving a balance unsatisfied of $5,403

Murray then brought suit against *Lovejoy & Co.* for this same trespass; and the facts being agreed on in a case stated, the court gave judgment for the plaintiffs for the amount of the judgment against the sheriff less the $830 paid by him.

On error here from the Massachusetts Circuit (where Lovejoy & Co. had been sued), three questions were made.

1. Did Lovejoy & Co., in giving the bond of indemnity to the sheriff, become thereby liable as joint trespassers with him in what was done under the attachment?

2. Did Murray, by suing the sheriff alone, and getting partial satisfaction of the judgment against that officer, bar himself of a right to sue Lovejoy & Co. for the same trespass?

3. Was Murray's judgment against the sheriff conclusive against Lovejoy & Co. in this suit against them?

The case was thoroughly argued on both sides, in this Court, on the authorities, ancient and modern, English and our own.

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MR. JUSTICE MILLER delivered the opinion of the Court:

The record before us raises three questions, all of which depend upon the principles of the common law exclusively for their solution.

We will consider them in the order in which they naturally arose on the trial, and in which also they have been argued.

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1. *Did the defendants, in giving a bond of indemnity to the sheriff, thereby become liable as joint trespassers with him in the proceedings under the attachment?*

The question arises upon the hypothesis that a writ of attachment was issued in favor of the present defendants against one O. H. Pratt, which was wrongfully levied by the sheriff on property of the present plaintiff. The bond of indemnity given by the present defendants recites upon its face that the sheriff has already levied the attachment, and there is nothing in the case except the bond to show that in making the levy or in anything done by the sheriff prior to the giving of the bond, he acted under the direction or instruction of the defendants or at their request. That the attaching creditor is not answerable for the act of the officer unless he in some manner interferes so as to make himself liable must be conceded. And unless the defendants have so interfered in this case as to incur this responsibility, the action cannot be sustained.

It is contended by counsel that a trespass cannot be ratified like a contract so as to make the party liable *ab initio.* But it is not necessary to decide in this case whether the defendants, by giving the bond, became liable for what had been done previous to that time. It is sufficient if they become liable for what was done by the sheriff after they gave the instrument. The trespass complained of was a continuing trespass, and consisted of a series of proceedings, ending in the sale of the plaintiff's property under execution. At the time the bond was given, the sheriff had merely taken possession of the goods under the attachment. No great injury had probably been done. The demand for indemnity and the giving of it by the defendants proceeded upon the supposition that the sheriff would without it go no further in that direction, but would give up the property to the claimant, the present plaintiff, and make his peace on the best terms he could. By the present statute of Iowa, he had a right to do this if the plaintiff in attachment refused to assume the hazard of indemnifying him. And if there were no such statute, he had a right to deliver the property to the

claimant and risk a suit by the plaintiff in attachment rather than a contest with a rightful claimant of the goods.

The giving of the bond by the present defendants must therefore be held equivalent to a personal interference in the course of the proceeding by directing or requesting the sheriff to hold the goods as if they were the property of the defendants in attachment. In doing this, they assumed the direction and control of the sheriff's future action so far as it might constitute a trespass, and they became to that extent the principals, and he their agent in the transaction. This made them responsible for the continuance of the wrongful possession and for the sale and conversion of the goods -- in other words, for all the real damages which plaintiff sustained.

The first question must therefore be answered in the affirmative.

2. *Did the plaintiff, by suing Hayden, the sheriff, alone, recovering judgment for about six thousand dollars, and receiving from him eight hundred and thirty dollars on the said judgment, thereby preclude himself from maintaining this suit against these defendants for the same trespass? Is the judgment, or the judgment and part payment, in that case a bar to this action?*

Parke, Baron, in the case of *King v. Hoare,* [Footnote 1] speaking in reference to the same proposition in its application to actions on joint contracts, says in 1846 that it is remarkable that the question should never have been decided in England. It is equally remarkable that the proposition here presented should be an open question at this day.

The faithful and exhausting research of counsel in this case shows that there are conflicting authorities, not only on the main proposition, but on several incidental and collateral points closely connected with it. Two propositions, however, seem to be conceded by all the authorities which bear with more or less force on the main question and which may as well be stated here.

1. That persons engaged in committing the same trespass

are joint and several trespassers, and not joint trespassers exclusively. Like persons liable on a joint and several contract, they may be all sued in one action, or one may be sued alone, and cannot plead the nonjoinder of the others in abatement, and so far is the doctrine of several liability carried that the defendants, where more than one are sued in the same action, may sever in their pleas, and the jury may find several verdicts, and on several verdicts of guilty may assess different sums as damages.

2. That no matter how many judgments may be obtained for the same trespass or what the varying amounts of those judgments, the acceptance of satisfaction of any one of them by the plaintiff is a satisfaction of all the others except the costs, and is a bar to any other action for the same cause.

In the latest English case upon the principal question, namely *Buckland v. Johnson,* [Footnote 2] Jervis, C.J., holds the former judgment against the son, although fruitless, to be a bar to the second suit against the father for the same goods upon the ground that by the former judgment the property in the goods was vested in the defendant in that action. As this is the latest case in the English courts which expressly decides the point, it may perhaps be received as the English doctrine. But this concession must be made with some hesitation in view of opinions expressed in other cases decided in the same country. In the very case in which that judgment is rendered, the chief justice takes occasion to correct what he supposes to be an erroneous statement of Tindal, C.J., in *Cooper v. Shepherd* to the effect

"that according to the doctrine of the cases which were cited in argument by a former recovery in trover *and payment of damages,* the plaintiff's right of property vests in the defendant in that action."

It was therefore the opinion of C.J. Tindal that *payment of the damages recovered* is essential to vest the property in defendant, and this only a few years before the case of *Johnson v. Buckland* was decided. That case was decided in 1854, and mainly on the authority of *Brown v. Wootton,* reported in

Yelverton, as also by Croke, J. The reason for the decision, as given by Popham, C.J., is thus stated in the latter book:

"In the cause of action being against divers, for which damages uncertain are recoverable, and the plaintiff having judgment against one person for damages certain, that which was uncertain before is reduced *in rem judicatam,* and to certainty, which takes away the action against others."

If the only object, or indeed the principal object, in obtaining a judgment in trespass was to render certain the extent of plaintiff's injuries or the amount of damages which would compensate for those injuries, we might be able to comprehend the force of this logic. But as it is the purpose of the law, and the main purpose for which courts of justice are instituted, to procure satisfaction for these injuries, we do not see the sequence in the reasoning of the learned judge.

Brown v. Wootton was decided in Trinity Term, 3 James I. Prior to that time, the law had been thought to be the other way. [Footnote 3] In *Claxton v. Swift,* [Footnote 4] Shower said "it was never pretended, until the case of *Brown v. Wootton,* that a bare judgment should be a bar."

In *Cocke v. Jenner,* reported by Hobart, and which was in Trinity Term, 12 James I (only nine years after *Brown v. Wootton*), the question arose on a release of one joint trespasser, which was held to be a bar to a suit against the other on the ground that it was equivalent to satisfaction; yet the language of the report leaves a strong impression that it was the opinion of the court that several judgments might be had and that only satisfaction or its equivalent would bar proceedings against all who were liable. And the case of *Corbett v. Barnes,* cited from Sir W. Jones (time of Charles the First), which was on *audita querela,* while it holds that only one satisfaction can be had, implies clearly that several judgments may be rendered against joint trespassers. Indeed, that very case was where one judgment had been rendered in the King's Bench against one and in the Common Pleas against three others for the same trespass.

These cases show that after as well as before the case of *Brown v. Wootton,* the law was supposed by some of the ablest judges in England to be otherwise than what it decides, and we know of no case in which it was followed in England as implicit authority until *Buckland v. Johnson* in 1854.

The rule in that case has been defended on two grounds, and on one or both of these it must be sustained, if at all. The first of these is that the uncertain claim for damages before judgment has, by the principle of *transit in rem judicatum,* become merged into a judgment which is of a higher nature. This principle, however, can only be applicable to parties to the judgment, for as to the other parties who may be liable, it is not true that plaintiff has acquired a security of any higher nature than he had before. Nor has he, as to them, been in anywise benefited or advanced towards procuring satisfaction for his damages by such judgment.

This is now generally admitted to be the true rule on this subject in cases of persons jointly and severally liable on contracts, and no reason is perceived why joint trespassers should be placed in a better condition. As remarked by Lord Ellenborough in *Drake v. Mitchell,* [Footnote 5]

"A judgment recovered in any form of action is still but a security for the original cause of action until it be made productive in satisfaction to the party, and therefore till then it cannot operate to change any other collateral concurrent remedy which the party may have."

The second ground on which the rule is defended is that by the judgment against one joint trespasser, the title of the property concerned is vested in the defendant in that action, and therefore no suit can afterwards be maintained by the former owner for the value of that property or for any injury done to it.

This principle can have no application to trespassers against the person, nor to injuries to property, real or personal, unaccompanied by conversion or change of

possession. Nor is the principle admitted in regard to conversions of

personal property. Prior to *Brown v. Wootton,* the English doctrine seems to have been the other way, as shown by Kent in his Commentaries, [Footnote 6] referring to Shepherd's Touchstone, [Footnote 7] and Jenkins. [Footnote 8]

We have thus far confined ourselves to the examination of the English authorities and the principles discussed in them, and we are forced to the conclusion that even at this day, the doctrine there is neither well settled nor placed on any satisfactory ground.

In turning our attention to the American cases, we have been able to find but two in which the point directly in issue has been ruled in favor of the bar of the former judgment, although there are some other cases which hold that the right of property is transferred by the judgment. The first of these two cases is *Wilkes v. Jackson.* [Footnote 9] This was an early case in the Court of Appeals of Virginia which seems to have passed without much consideration and was mainly rested on the judgment of the same court in a former case, which does not appear to sustain it.

The other is the Rhode Island case of *Hunt v. Bates.* [Footnote 10] It is a very recent case, decided in 1862, but the absence of any other reasoning than a mere recapitulation of the English cases and the remark that upon their authority the court is obliged to rest its decision deprives it of any other weight than what should be attached to those cases. This we have already considered.

In addition to this, it has been decided in South Carolina and Pennsylvania that the recovery of a judgment for the value of the goods converted transfers the title to the defendant. *Rogers v. Moore;* [Footnote 11] *Floyd v. Brown.* [Footnote 12]

On the other hand, in the case of *Livingston v. Bishop* [Footnote 13] in the supreme court of New York in 1806, Kent, C.J., overrules *Brown v. Wootton* and

holds that judgment alone is not a bar.

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In *Sheldon v. Kibbe,* [Footnote 14] decided in 1819 in the Supreme Court of Connecticut, the court, by Hosmer, C.J., enters into an elaborate examination of the authorities and a full consideration of the question on principle and lays down the doctrine that neither a judgment nor the taking of the body of the defendant in execution will bar a second action against a co-trespasser. Nothing short of satisfaction or release can have that effect.

In *Sanderson v. Caldwell,* [Footnote 15] in the Supreme Court of Vermont in 1826, it is held that neither judgment, nor issuing execution nor anything short of satisfaction is a bar to a second suit brought against another joint trespasser.

Osterhout v. Roberts, [Footnote 16] a year later, in the supreme court of New York, was a plea that defendant's son had been sued, had a judgment rendered against him, and had been taken in execution and imprisoned sixty days for the same trespass. Yet the plea was held bad. The trespass was for taking a watch.

In *Elliott v. Forter,* [Footnote 17] Robertson, C.J., of the Court of Appeals of Kentucky, examines the whole subject fully both on principle and authority and holds that the first judgment is no bar and that the title to the property does not pass by judgment in trespass or trover. This case is affirmed by the same court in *Sharp v. Gray.* [Footnote 18]

Blann v. Cochern, in Alabama, [Footnote 19] was an action of trespass. The defendant pleaded a former recovery against a co-trespasser and payment of the judgment and costs so recovered to the clerk of the court. But the plea was held bad because it was not averred that it was accepted by the plaintiff.

In *Knott v. Cunningham,* [Footnote 20] the Supreme Court of Tennessee held that a former judgment against one tortfeasor was no bar to a suit against another for the same tort without satisfaction.

In *Page v. Freeman,* [Footnote 21] the Supreme Court of Missouri held the same doctrine.

In *Floyd v. Browne,* [Footnote 22] Gibson, C.J., of Pennsylvania, while holding that after a judgment in trover against two trespassers without satisfaction, plaintiff cannot bring assumpsit against another trespasser, uses this language:

"A plaintiff is not compelled to elect between actions that are consistent with cash other. Separate actions against a number who are severally liable for the same thing, or against the same defendant on distinct securities for the same debt or duty, are concurrent remedies. Trespass is, in its nature, joint and several, and in separate actions against joint trespassers, being consistent with each other, nothing but satisfaction by one will discharge the rest."

Trover and assumpsit, however, he holds to be inconsistent remedies.

If we turn from this examination of adjudged cases, which largely preponderate in favor of the doctrine that a judgment, without satisfaction, is no bar, to look at the question in the light of reason, that doctrine commends itself to us still more strongly. The whole theory of the opposite view is based upon technical, artificial, and unsatisfactory reasoning.

We have already stated the only two principles upon which it rests. We apprehend that no sound jurist would attempt at this day to defend it solely on the ground of *transit in rem judicatum.* For while this principle, as that other rule that no man shall be twice vexed for the same cause of action, may well be applied in the case of a second suit against the same trespasser, we do not perceive its force when applied to a suit brought for the first time against another trespasser in the same matter.

In reference to the doctrine that the judgment alone vests the title of the property converted in the defendant, we have seen that it is not sustained by the weight of authorities in this country. It is equally incapable of being maintained on principle.

The property which was mine has been taken from me by fraud or violence. In order to procure redress, I must

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sue the wrongdoer in a court of law. But instead of getting justice or remedy, I am told that by the very act of obtaining a judgment -- a decision that I am entitled to the relief I ask -- the property which before was mine has become that of the man who did me the wrong. In other words, the law, without having given me satisfaction for my wrong, takes from me that which was mine and gives it to the wrongdoer. It is sufficient to state the proposition to show its injustice.

It is said that the judgment represents the price of the property, and as plaintiff has the judgment, the defendant should have the property. But if the judgment does represent the price of the goods, does it follow that the defendant shall have the property before he has paid that price? The payment of the price and the transfer of the property are, in the ordinary contract of sale, concurrent acts. [Footnote 23]

But in all such cases, what has the defendant in such second suit done to discharge himself from the obligation which the law imposes upon him to make compensation? His liability must remain, in morals and on principle, until he does this. The judgment against his co-trespasser does not affect him so as to release him on any equitable consideration. It may be said that neither does the satisfaction by his co-trespasser or a release to his co-trespasser do this, and that is true. But when the plaintiff has accepted satisfaction in full for the injury done him, from whatever source it may come, he is so far affected in equity and good conscience that the law will not permit him to recover again for the same damages. But it is not easy to see how he is so affected until he has received full satisfaction or that which the law must consider as such.

We are therefore of opinion that nothing short of satisfaction or its equivalent can make good a plea of former judgment in trespass offered as a bar in an action against another joint trespasser who was not party to the first judgment.

The second question must therefore be answered in the negative.

3. *Is the judgment of plaintiff, against the sheriff, Hayden, conclusive against the defendants in this action?*

The facts on which this proposition is based are the giving of the bond of indemnity by the defendants and that Hayden, when sued, notified them of the suit and called on them to defend it; that they did employ counsel to defend it, and that the counsel so employed had exclusive control of the defense of the suit.

The legal facts necessary to enable plaintiff to recover in the present suit are first his title to the goods which had been converted, second the value of those goods, and third the participation of the defendants in the conversion. The latter point, we have already seen, is established by the indemnifying bond to the sheriff. Does the record of the judgment against Hayden conclusively establish the other two points under the circumstances just stated?

We are of opinion that it does.

We have already shown that the effect of giving the bond was to make defendants principals in the transaction, and that so far as the action of the sheriff after that was a trespass, it was directed by them, and was for their benefit. With a just appreciation of their relations to each other in the transaction, he called on them, when sued, to assume the defense; and they did so. They were defending their own acts, although the suit was in the sheriff's name. They had full right to make all defense there, which they could make here. They could adduce witnesses, and cross-examine those of plaintiff, and could have taken an appeal. The case is wanting in none of the elements so happily stated by Mr. Greenleaf [Footnote 24] as rendering a former judgment conclusive in a second suit. "Justice requires," he says,

"that every cause be once fairly and impartially tried; but the public tranquility demands that, having been once so tried, all litigation of that question, and

between the same

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parties, should be closed forever. It is also a most obvious principle of justice that no man ought to be bound by proceedings to which he is a stranger, but the converse of this rule is equally true -- that by proceedings to which he was not a stranger he may well be bound. Under the term parties, in this connection the law includes all who are directly interested in the subject matter and had a right to make defense or to control the proceedings and to appeal from the judgment. This right involves also the right to adduce testimony and to cross-examine the witnesses adduced on the other side. Persons not having these rights are strangers to the cause. But to give full effect to the principle by which parties are held bound by a judgment, all persons who are represented by the parties and claim under them or in privity with them are equally concluded by the same proceedings. . . . The ground, therefore, upon which persons standing in this relation to the litigating party are bound by the proceedings to which he was a party is that they are identified with him in interest, and wherever this identity is found to exist, all are alike concluded."

The authorities cited by the learned author fully sustain these propositions.

The present case comes within them and must be governed by them. In addition, various cases have been examined which affirm the conclusiveness of former judgments under circumstances which we are unable to distinguish in principle from the one before us, and in several instances the analogy in the facts is perfect. They are presented in the note below. [Footnote 25]

This last question must therefore be answered in the affirmative.

As the rulings of the circuit court were in accordance with the principles here decided, the judgment of that court must be

Affirmed with costs.

[Footnote 1]

13 Meeson & Welsby 502.

[Footnote 2]

15 C.B. 145.

[Footnote 3]

See Brooke's Abridgment Pl. 98; *Morton's Case,* Cro.Eliz. 30.

[Footnote 4]

2 Shower 494.

[Footnote 5]

3 East 258.

[Footnote 6]

2 Kent 388.

[Footnote 7]

Title "Gift."

[Footnote 8]

Page 109, Case 88.

[Footnote 9]

2 Henning & Munford 355.

[Footnote 10]

7 R.I. 217.

[Footnote 11]

1 Rice 60.

[Footnote 12]

1 Rawle 212.

[Footnote 13]

1 Johnson 290.

[Footnote 14]

3 Conn. 214.

[Footnote 15]

2 Aiken, 195.

[Footnote 16]

8 Cowen 43.

[Footnote 17]

5 Dana 299.

[Footnote 18]

5 B.Monroe 4.

[Footnote 19]

20 Ala. 320.

[Footnote 20]

2 Sneed 204.

[Footnote 21]

19 Mo. 421.

[Footnote 22]

1 Rawle 125.

[Footnote 23]

2 Kent 388-389; Greenleaf on Evidence § 533; *Hyde v. Noble,* 13 N.H. 500; *Hepburn v. Sewell,* 5 Harris & Johnson 211.

[Footnote 24]

1 Greenleaf on Evidence § 522-523.

[Footnote 25]

Ferris v. Arden, Cro.Eliz. 667; *Kennedy v. Cope,* Douglas 517; *White v. Philbrick,* 5 Greenleaf 147; *Roberts v. Prince,* 4 Hill 19; *Calkens v. Allerton,* 3 Barbour S.C. 173; *Glass v. Nichols,* 35 Me. 328; *Castle v. Noyes,* 14 N.Y. 329; *Warfield v. Davis,* 14 B.Monro 41.