

Gunnell Vs. Bird

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Court : US Supreme Court

Decided On : 1869

Appeal No. : 77 U.S. 304

Appellant : Gunnell

Respondent : Bird

Judgement :

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Gunnell v. Bird

77 U.S. (10 Wall.) 304

APPEALS FROM THE SUPREME COURT

OF THE DISTRICT OF COLUMBIA

SYLLABUS

1. In stating partnership accounts, where one partner has had entire charge of the business, he is to be debited with the whole capital placed in his hands as well as with the proceeds of sales realized by him.

2. If part of the capital consisted of stock which has been used in the business or disposed of and the proceeds charged against him, he should be credited with such stock as a disbursement to the amount at which it was originally charged against him.

3. An allegation in an answer entirely impertinent to the bill cannot be used as evidence for the defendant, even though the plaintiff neglect to file a replication.

On the 1st of May, 1845, Gunnell on one side and Bird and Hepburn on the other entered into co-partnership in the lumber business as equal partners, entitled to an equal share of the profits. Gunnell was the active partner, and put in, as his part of the capital, a stock of lumber valued at \$6,627.56, and Bird and Hepburn put in \$7,775.65 in cash, making a joint capital of \$14,403.21. The business was carried on for four years, during which period the gross amount of sales was \$93,471.11, and the disbursements were, for lumber purchased of others, \$55,146.55; for general expenses, \$12,242.95; for lime, \$732.18; and for rent, not contained in the other accounts, \$111, making a total of \$68,232.68. At the termination of the partnership, the stock on hand, books, and unsettled accounts were turned over by Gunnell to Bird and Hepburn, who collected \$7,775.68 (including what they had previously received), and retained in hand bad and uncollected debts to the amount, in 1852, when, as hereafter mentioned, the case came before the auditor, of \$5,461.56.

The parties were unable to agree upon a settlement of the partnership accounts, and Bird and Hepburn filed their bill in August, 1850, against Gunnell to obtain an adjustment. After answer, an auditor was appointed, who reported in

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August, 1852, that Gunnell was indebted to Bird and Hepburn in the sum of \$3,001.56, with interest from the 1st of May, 1849, the time of the dissolution of the partnership. The auditor stated the account thus:

The total sales during the partner-

ship made by the defendant. . . . \$93,471.11

The total amount of lumber and
other articles purchased by the
defendant for carrying on the
business \$55,146.55

And as increased by lime purchased,
not included in the above amount. 732.18
----- \$55,878.73

Amount of the expenses of conducting
the business \$12,242.95

And as increased by rent still
unpaid, and not included in the
above. 111.00

And by interest on the difference
of capital 183.52
----- 12,537.47

Amount of bad and outstanding
debts, property &c.; 5,461.56
----- 73,877.76

\$19,593.35

Gunnell's capital. \$ 6,627.56

Bird and Hepburn's 7,775.65

----- 14,403.21

Net profit \$ 5,190.14

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Half to each \$ 2,595.07

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Gunnell's capital. \$ 6,627.56

His share of the profits 2,595.07

----- \$ 9,222.63

Bird and Hepburn's capital \$ 7,775.65

Their share of the profits 2,595.07

Interest on difference of capital. . 183.52

----- 10,554.24

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Capital and profit and interest due Bird and Hepburn:

Bird and Hepburn \$10,554.24

Collected by them since the dissolution, and amount of their

individual accounts on the books of the complainants, as

shown. 7,552.68

Balance of cash due to the complainants on the

defendant's hands \$ 3,001.56

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Both the complainants having died, a bill of revivor was afterwards filed; a pure bill of revivor, stating only the facts necessary to have the cause revived, and the proceedings continued from the point reached when the complainants died, and concluding with the prayer for a writ to the defendant to show cause why the suit should not be revived.

Rule No. 56, regulating equity proceedings, provides in such case that if no cause to the contrary be shown by next rule day, "the suit shall stand revived as of course." The subpoena was served in June, 1859. No answer was made by the defendant until October following, and so the suit stood revived on the first Monday of August at latest.

Then the defendant, in October, filed an answer to the bill of revivor, admitting the facts stated in the bill but going on to state new matter as to the conduct of the complainants in regard to the books &c.;, and setting up that Bird and Hepburn should be charged with all the bad and uncollected debts, because by the use of due diligence they could have collected them, but had failed to do so.

To this answer no replication was put in. The matter being referred again to the auditor, he simply affirmed his old report.

Exceptions were taken to the report by both parties, but it was confirmed by the special term of the court, whose decision was affirmed by the general term. From that decision an appeal was taken to this Court, and the question now before this Court was whether the auditor's report was correct.

MR. JUSTICE BRADLEY delivered the opinion of the Court.

The opinion of the court is that the auditor committed an error, and we should refer the cause back for a further report if we deemed it necessary to do so; but the facts are confined within such narrow limits, and are so clearly ascertained

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by the proofs and admissions of the parties before the auditor, that we deem it a useless formality.

The error of the auditor consists in not charging Gunnell with the capital contributed by the partners and placed in his hands, and not crediting him with the cost of the lumber originally contributed by himself.

Being the active managing partner, it is plain that he should be charged with:

First, the whole capital \$ 14,403.21

Secondly, the proceeds of sales. . . . 93,471.11

Amounting in all to. \$107,874.32

He received these amounts, and he should be charged with them.

On the other hand, it is equally plain that he should be credited with:

First, the lumber on hand when the business was commenced, he having disposed of it, and being charged with the proceeds instead.

This, as charged to him, was \$ 6,627.56

Secondly, the amount paid out by him to others

for lumber, which was. 55,146.55

Thirdly, the general expenses of the business. . . 12,242.95

Fourthly, the item paid for lime 732.18

And the item paid for rent 111.00

Amounting in all to. \$74,860.24

And leaving a balance in hand, at the conclusion

of the business, of. \$33,014.08

The original capital had been increased to this sum, and had the assets all been good, there would have been a clear profit of \$18,610.87. But the bad and uncollected debts being deducted, the profit is reduced to \$13,149.31; one-half of which, besides his or their original capital, belonged to each party.

Gunnell's capital was \$ 6,627.56

His half of the profits was 6,574.65

Total amount due to Gunnell \$13,202.21

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Bird and Hepburn's capital was. \$ 7,775.65

Their half of the profits was 6,574.66

Total amount due to Bird and Hepburn. . \$14,350.31

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There remains to be adjusted a question of interest due to Bird and Hepburn for having contributed more capital than Gunnell whilst the business was being carried on. The auditor makes this interest \$183.52, one-half of which should be deducted from the share of Gunnell, and added to that of Bird and Hepburn. This would reduce the former to \$13,110.45, and raise the latter to \$14,442.07.

Now the books show that Bird and Hepburn drew and collected only \$7,552.68. This left a balance still due them of \$6,889.39 to be accounted for by Gunnell.

In this account, neither party is charged with the bad and uncollected debts. They are simply deducted from the profits, and the loss is thus equally divided. It is claimed by the defendant that Bird and Hepburn should be charged with the whole of this loss because they had the securities and failed to collect them when, by the use of due diligence, they might have done it. This fact does not appear in the case except by the unsupported allegation of the defendant, made in his answer to the bill of revivor. This portion of the answer was entirely impertinent to the bill, which was strictly and purely a bill of revivor. No formal replication was required to avoid its effect as evidence in the cause.

The result is that the complainants are entitled to a decree against the defendant for the sum of \$6,889.39, with interest from the 1st day of May, 1849, and costs. The decree of the district court must be

Reversed and a decree rendered for the complainants accordingly.