

Gillette Vs. Bullard

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Court : US Supreme Court

Decided On : 1874

Appeal No. : 87 U.S. 571

Appellant : Gillette

Respondent : Bullard

Judgement :

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Gillette v. Bullard

87 U.S. (20 Wall.) 571

ERROR TO THE SUPREME COURT

OF THE TERRITORY OF MONTANA

SYLLABUS

In an action on the bond given on appeal from the district court to the Supreme Court of the Territory of Montana, the plea was that the defendant had prosecuted a writ of error from the judgment of the territorial court to the Supreme Court of the

United States, and had had executed his bond which operated as a supersedeas of that judgment, and that no remittitur or mandate had issued from the latter court, and that the judgment of the supreme court of the territory still remained in the court so stayed by the supersedeas bond and the order thereon.

This plea is insufficient in that it does not aver that at the commencement of this action the appeal was then pending in this Court or had ever been perfected. Nor is the case altered by the Practice Act of Montana, which enacts in its seventy-eighth section that

"In the construction of a pleading, for the purpose of determining its effect, its allegations shall be liberally construed with a view to substantial justice."

Bullard, assignee of Marden, sued Gillette upon an appeal bond. The action was commenced on the 30th of January, 1872. The complaint alleged that on the 15th June, 1868, Marden recovered a judgment in the district court of the territory against Plaisted & Wheelock, which yet remained in full force, unreversed and unsatisfied except as thereafter

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stated; that on the 16th day of July, 1868, Plaisted & Wheelock appealed from that judgment to the supreme court of the territory, and that on such appeal, Gillette executed a bond whereby he became bound for the payment of the judgment and all damages and costs that might be awarded against the appellants if it should be affirmed; that on the 31st December, 1868, said judgment was affirmed by the supreme court of the territory and costs adjudged against the appellants; that on the 2d of July, 1870, Marden assigned the judgment and his interest therein to the plaintiff; that by virtue of executions issued, certain sums were made on the 22d of August and the 26th of September, 1870, but that a large balance still remained unpaid, for the recovery of which the action was brought.

The answer, filed on the 21st of February, A.D. 1872, did not deny any of the averments in the complaint, but alleged by way of defense that on the ____ day of January, 1869, Plaisted & Wheelock appealed from the judgment of the supreme

court of the territory to this Court; that they thereupon executed and filed with the clerk of the supreme court of the territory a good and sufficient bond on appeal, and that court stayed all proceedings upon the judgment and granted a supersedeas in the action; that no remittitur or mandate had ever been issued from this Court to the supreme court of the territory or from the supreme court of the territory to the district court, and that the judgment of the supreme court of the territory still remained in that court "so stayed by the order thereof by the giving of the bond on appeal and by the supersedeas."

After the filing of the answer, judgment was given against Gillette upon the pleadings, and he brought the case here.

The question was whether the answer stated facts sufficient to constitute a defense to the action.

By the seventy-eighth section of the Practice Act of Montana, it is provided that

"In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed with a view to substantial justice between the parties. "

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THE CHIEF JUSTICE delivered the opinion of the Court.

The seventy-eighth section of the Practice Act of Montana, which provides that

"In the construction of a pleading for the purpose of determining its effect, its allegations shall be liberally construed with a view to substantial justice

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between the parties,"

is a modification of the common law rule which construes all pleadings most strongly against the pleader, but even with the statute as our guide, we think the judgment below was correct. An answer, to be good, must overcome the case

made by the complaint. If the facts well pleaded in the complaint are admitted, as in this case, it must state other facts sufficient, if true, to defeat the action in whole or in part, or it will not avail as a defense.

That is not the case here. It is nowhere averred that at the time of the commencement of this action, the appeal to this Court was pending or that it had ever been perfected. In fact, such averments seem to have been studiously avoided. The appeal was allowed in January, 1869. Unless a transcript was filed in this Court before the end of the following term, that appeal would be vacated. In the language of very many decisions, it would become *functus officio*. [*](#) The supersedeas is but an appurtenance of the appeal. The stay insisted upon in the answer, although there seems to have been an attempt to make it more, is only that which resulted from the supersedeas. That was at an end when the appeal became inoperative. The failure, therefore, to aver that the appeal was in force was a failure to aver that the stay as granted continued to have effect.

The complaint alleges that money was made upon executions in 1870. The date of the issue of the executions is not given, but if the collection was regular, the judgment could not have been stayed when the money was made, and that was after the time within which the appeal, if it was to remain in force, must be perfected. Clearly, therefore, to make the defense perfect, it was incumbent upon the defendant to aver distinctly in his answer not only that the appeal had been taken, but that it had been perfected and was still pending when the action was commenced.

It is, however, stated that no mandate or remittitur had been issued from this Court to the supreme court of the

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territory or from the supreme court of the territory to the district court when the action was commenced. None could issue from this Court, for there was nothing here, so far as the pleadings show, to remand. None was necessary from the supreme court of the territory to the district court, because the condition of the

bond is to pay if the judgment should be affirmed. The affirmance, therefore, is the material fact which is to fix the liability. That is averred in the complaint and not denied in the answer.

Judgment affirmed.

* [Edmonson v. Bloomshire](#), 7 Wall. 310.

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