Post Vs. Pearson

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Court : US Supreme Court

Decided On : May-07-1883

Appeal No. : 108 U.S. 418

Appellant : Post

Respondent : Pearson

Judgement :

Post v. Pearson - 108 U.S. 418 (1883)
U.S. Supreme Court Post v. Pearson, 108 U.S. 418 (1883)

Post v. Pearson

Decided May 7, 1883

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I N ERROR TO THE SUPREME COURT

OF THE TERRITORY OF DAKOTA

SYLLABUS

An agreement in writing, between "W., superintendent of the Keets Mining Company, parties of the first part, and P., party of the second part," by which "the said parties of the first part" agree to deliver at P.'s mill ore from the Keets mine (owned by the company) to be crushed and milled by P., and signed by "W., Supt. Keets Mining Co.," and by P., is the contract of the company.

An order sustaining a defendant's demurrer and giving the plaintiff leave to amend does not preclude the plaintiff from renewing, or the court from entertaining, the same question of law at the subsequent trial on an amended declaration.

This was an action brought in an inferior court of Dakota Territory by John B. Pearson against Alvin W. Whitney and Morton E. Post, co-partners under the name of the Keets Mining Company.

Annexed to the complaint was a copy of a contract under seal entitled

"Memorandum of an agreement made and entered into this 16th day of July, 1877 at Central City, Dakota, by and between A. W. Whitney, superintendent of the Keets Mining Company, parties of the first part, and J. B. Pearson, party of the second part,"

and by which "the said parties of the first part" agree to deliver at Pearson's mill in Central City gold-bearing ore from the Keets mine from time to time, in quantities sufficient to constantly supply the working capacity of the mill of about thirty tons daily, and also agree to pay the sum of nine dollars for each ton crushed and milled, and Pearson agrees to run his mill constantly upon that ore for a term of ninety days from the date of the contract, and which is signed and sealed as follows:

"A. W. Whitney [Seal]"

"Sup. Keets Mining Co."

"John B. Pearson [Seal]"

The complaint set forth the terms of the contract and alleged the plaintiff's performance and readiness to perform and the defendants' neglect and refusal to deliver ore as agreed or to pay for crushing and milling what they did deliver.

The defendant Post demurred to the complaint because he was not shown to be a party to the contract sued on and because sufficient facts were not stated to constitute a cause of action against him. The inferior court sustained the demurrer and gave the plaintiff leave to amend his complaint.

The plaintiff then filed an amended complaint not alleging the contract to have been in writing but setting forth its terms and alleging the other facts substantially as in the original complaint. The defendants answered, Post denying all the allegations of the amended complaint and Whitney admitting the making of the contract and denying the other allegations.

At the trial, the written contract was admitted in evidence without objection. It appeared that it was made by the parties thereto, and that Whitney, in making it, acted in behalf and for the benefit of the Keets Mining Company, of which he was the superintendent, and was understood by the plaintiff so to act, and that Whitney, as such superintendent, afterwards broke the contract to the damage of the plaintiff.

The plaintiff, against the objection of Post and for the purpose of showing that Post was one of the real parties in interest and a participant in the results of the contract and that Whitney acted merely as the agent of himself and Post as principals, was permitted to introduce oral evidence that Post was an owner of the Keets mine and a copartner with Whitney under the name of the Keets Mining Company in the business of working the mine and having the ore from it crushed, and as such co-partner received a large portion of the proceeds of the contract, knowing whence they came.

The court also declined to rule and instruct the jury, as Post requested, that the order sustaining his demurrer to original complaint prevented a recovery against him in this action.

Post alleged exceptions to both rulings, and the jury returned a verdict for the plaintiff, upon which judgment was rendered.

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On appeal, that judgment was affirmed by the supreme court of the territory. *See* 2 Dak. 220. Post sued out this writ of error.

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MR. JUSTICE GRAY delivered the opinion of the Court. After reciting the facts as above set forth, he said:

It is unnecessary to consider whether, if this were to be treated as a contract under seal, it could be held to be upon its face the contract of the Keets Mining Company, and not of Whitney only, or whether the oral testimony would have been admissible to charge Post, because, by the Civil Code of Dakota, "all distinctions between sealed and unsealed instruments

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are abolished" and

"any instrument within the scope of his authority by which an agent intends to bind his principal does bind him if such intent is plainly inferable from the instrument itself."

Civil Code of Dakota of 1877 925, 1373.

By the subject matter of this contract, which is the delivery and milling of ore from the Keets mine, by the description of Whitney, both in the body of the contract and in the signature, as superintendent of the Keets Mining Company, and by the use

of the words "parties of the first part," which are applicable to a company and not to a single individual, the contract made by the hand of Whitney clearly appears upon its face to have been intended to bind, and therefore did bind, the company, and, upon proof that Post was a partner in the company, bound him. *Whitney v. Wyman,* 101 U. S. 392 ; *Hitchcock v. Buchanan,* 105 U. S. 416 ; *Goodenough v. Thayer,* 132 Mass. 152.

The order sustaining Post's demurrer to the original complaint gave the plaintiff leave to amend, and did not preclude the plaintiff from renewing, nor the court from entertaining, the same question of law upon a fuller development of the facts at the trial on the amended complaint. *Calder v. Haynes,* 7 Allen 387.

Judgment affirmed.