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Harshman Vs. Knox County

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Court : US Supreme Court

Decided On : May-27-1887

Appeal No. : 122 U.S. 306

Appellant : Harshman

Respondent : Knox County

Judgement :

Harshman v. Knox County - 122 U.S. 306 (1887)
U.S. Supreme Court Harshman v. Knox County, 122 U.S. 306 (1887)

Harshman v. Knox County

Submitted April 22, 1857

Decided May 27, 1887

122 U.S. 306

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE EASTERN DISTRICT OF MISSOURI

SYLLABUS

Allegations of material facts and of traversable facts in a declaration which are necessary to be proved in order to support a recovery are confessed by a default, and in mandamus against the proper municipal officers to enforce the collection of a tax to pay the judgment entered against a municipal corporation upon such default, the respondent is estopped from denying such allegations.

Mandamus to enforce the collection of a tax to pay a judgment against a municipal corporation being a remedy in the nature of an execution, nothing can be alleged by the respondent to contradict the record of the judgment.

Ralls County v. United States, 105 U. S. 733, explained.

This was a proceeding by mandamus against the justices of the county court of Knox County to compel them to levy a tax sufficient to pay a judgment for $77,374.46 obtained by the relator, Harshman, on the 28th of March, 1881, against that county in the Circuit Court for the Eastern District of Missouri.

The information alleged that

"Said judgment was recovered upon bonds and coupons issued by the said county in part payment of a subscription made by the said county on the 9th day of June, 1867, to the capital stock of the Missouri and Mississippi Railroad Company, a railroad company duly organized under the laws of the State of Missouri; that said subscription was authorized by a vote of the people of said county at a special election held pursuant to an order of the

county court of said county on the 12th day of March, 1867, under the 17th section of chapter 63 of the General Statutes of Missouri of 1866, then in force; that at said election, two-thirds of the qualified voters of said county voted in favor of and assented to the making of said subscription; that relator has requested the said county court, and the justices thereof, to levy a special tax upon all property in said county made taxable by law for county purposes, and upon the actual capital that all merchants and grocers and other businessmen may have invested in business

in said county, and to cause the said tax to be collected in money, and, when collected, to be applied in payment and discharge of said judgment; that the said county court and the justices thereof have refused and neglected to levy the said tax; that the said county has no property out of which the said judgment can be levied, and that relator has no other adequate remedy at law."

The respondents made return to the alternative writ substantially as follows: they admit that the judgment of the relator was recovered upon bonds and coupons issued by the County of Knox in part payment of two subscriptions made by said county to the capital stock of the Missouri and Mississippi Railroad Company, but they deny that said subscriptions, or either of them, were authorized by a vote of the people of that county at either a general or special election held pursuant to an order of the county court of said county on the 12th day of March, 1867, or at any other time, under the 17th section of chapter 63 of the General Statutes of Missouri, then in force. They deny that two-thirds of the qualified voters of Knox County ever voted in favor of or assented to making any subscription to the capital stock of the Missouri and Mississippi Railroad Company. They aver that in point of fact, on the 13th of May, 1867, the county court of said county made a subscription to the capital stock of said company in the sum of $100,000, and on the 2d of May, 1870, the said court made a further subscription to the capital stock of said company in the sum of $55,000; that in payment of both of these subscriptions, the said court issued bonds in the denominations of $500 and $50; that fifty-eight of the relator's

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said bonds are of the first of these issues, and sixty are of the second; that both of these subscriptions were made without the assent of two-thirds of the qualified voters of the county, and indeed without any vote's being taken at all and against the will of said qualified voters; that they were made by authority only of 13 of the charter of the Missouri and Mississippi Railroad Company, being an Act of the General Assembly of the State of Missouri entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved February 20, 1865; that each of relator's said bonds contains a recital that it is issued under and pursuant

to orders of the County Court of Knox County to the Missouri and Mississippi Railroad Company, for subscription to the capital stock of said company, as authorized by said act to incorporate the Missouri and Mississippi Railroad Company, approved February 20, 1865, and that said court has each year since the issue of said bonds levied a tax of one-twentieth of one percent upon the assessed value of all the taxable property in said county, and has caused the same to be extended on the tax books of said county for each year, and has had said tax collected for the purpose of paying said bonds and coupons; that Knox County has no money in its Treasury with which to pay the relator's judgment, and that the judges of Knox County have no legal authority to levy any other or greater taxes than the taxes as hereinbefore stated, and no legal authority or power to levy, or cause to be collected, the special tax which the relator seeks to have imposed.

On the coming in of this return, the relator moved the court to quash the same on the ground that the matters and things therein set forth were inconsistent with and contradictory to the record of the judgment in the case. This motion was overruled by the court, to which ruling an exception was taken.

An answer to the return was filed by the relator, in which were set forth the various steps and proceedings taken, as therein alleged, by the authorities and people of the County of Knox in respect to the issue of the bonds on which the judgment was founded, claiming that an election was duly had by

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an order of the county court under the authority of the general laws of Missouri, in virtue of which the subscription to the stock of the railroad company was made and the bonds in question issued. To this answer a replication was filed, and the case was submitted to a jury.

On the trial, as appears by a bill of exceptions duly taken, the relator offered to read in evidence the petition, summons, marshal's return, and judgment referred to in the information. On objection made by the respondents, the court ruled that

these papers could not be read unless the relator would also read the bonds filed with said petition, to which ruling the relator excepted. The relator then put in evidence the said papers and also the said bonds.

The petition in the original action sets out

"That on the 9th day of June, 1867, defendant subscribed to the capital stock of the Missouri and Mississippi Railroad Company, a railroad company duly organized under the laws of this state, the sum of one hundred thousand dollars; that said subscription was authorized by a vote of the people of said County of Knox at a special election held pursuant to an order of the county court of said county on the 12th day of March, 1867, under the seventeenth section of chapter 63 of the General Statutes of Missouri of 1866, then in force; that at said election, two-thirds of the qualified voters of said county voted in favor of and assented to the making of said subscription; that in part payment of said subscription, defendant, by its county court, executed and issued divers bonds with coupons for interest attached; that by each of said bonds, defendants promised to pay to bearer at the National Bank of Commerce, in the City of New York, on the first day of February, 1878, the sum of five hundred dollars, with interest at the rate of seven percent per annum; that said coupons for interest were made and are payable on the first day of February of each year between the issuing of said bonds and the maturity thereof; that, by each of said coupons, defendant promised to pay bearer the sum of thirty-five dollars, being one year's interest on the bond to which it was attached; that in further payment in part of said subscription, defendant executed and issued diverse other bonds,

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with coupons for interest attached; that by each of said bonds defendant promised to pay to bearer at the National Bank of Commerce, in the City of New York, on the first day of February, 1880, the sum of five hundred dollars, with interest at the rate of seven percent per annum; that said coupons for interest were made payable on the first day of February of each year, between the issuing of said bonds and the maturity thereof; that, by each of said coupons, defendant promised

to pay to bearer the sum of thirty-five dollars, being one year's interest on the bond to which it was attached."

The petition also sets out that the plaintiff is the bearer and owner of diverse of said bonds and coupons, designated by numbers. The return of the summons shows that the writ was duly served, and judgment was rendered thereon March 28, 1881, by default, which sets forth that

"This action being founded upon certain bonds, and coupons for interest thereon, issued by said defendant and described in the petition, the court finds that the plaintiff has sustained damages by reason of the nonpayment thereof in the sum of $77,374.46. It is therefore considered by the court that the plaintiff, George W. Harshman, have and recover of the defendant, the County of Knox, as well as the said sum of $77,374.46, the damages aforesaid by the court assessed, as also the costs herein expended, and have thereof execution."

Each of the bonds contains the following recital:

"This bond being issued under and pursuant to order of the County Court of Knox County for subscription to the stock of the Missouri and Mississippi Railroad Company, as authorized by an act of the General Assembly of the State of Missouri, entitled 'An act to incorporate the Missouri and Mississippi Railroad Company,' approved February 20, 1865."

The issues of fact submitted to the jury were as follows:

"First. Was there an election held under the orders of the county court read in evidence, and did two-thirds of the qualified voters voting at said election cast their votes in favor of the subscription by the county court to the stock mentioned in said orders?"

"Second. Was the subscription to stock to the railroad company

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actually made not, as recited in said bonds, under the charter of the Missouri & Mississippi Railroad Co., but under the general law, whereby the authority to make such subscription and issue bonds therefor was dependent on the vote of the people? In other words, has the relator proved that despite the recitals in the bonds, they were not issued as recited, but under the general law, and that said recitals in the bonds were made through mistake or inadvertence?"

At the conclusion of the evidence, the court instructed the jury

"That to overcome the recitals in the bonds issued by the county court under its seal, the evidence must be clear and positive, full and explicit, and that the burden of proving the alleged mistake, so as to overthrow the said recitals, is upon the relator in this case,"

and "that the evidence to overcome said recitals is insufficient."

In answer to these questions, the jury found in the affirmative on the first, and in the negative on the second, and thereupon the court entered a judgment in favor of the respondents in which it is recited that it appeared to the court

"That there was an election held under orders of the County Court of Knox County, and that two-thirds of the qualified voters voting at said election cast their votes in favor of the subscription by the said court to the stock mentioned in its orders, but that the subscription to the stock of the Missouri and Mississippi Railroad Company was actually made and the bonds issued not, as alleged in the petition and alternative writ in this case, under the general law of the State of Missouri, but solely under and by virtue of an Act of the General Assembly of the State of Missouri entitled 'An act to incorporate the Missouri and Mississippi Railroad Company,' approved February 20, 1865."

The charter of the Missouri and Mississippi Railroad Company referred to incorporates it with power to construct a railroad from the Town of Macon, in the County of Macon, in the State of Missouri, through the Town of Edina, in the County of Knox, in said state, and thence to or near the northeast corner of said state, in the direction of Keokuk, in Iowa, or Alexandria, Missouri. The thirteenth

section is as follows:

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"SEC. 13. It shall be lawful for the corporate authorities of any city or town, the county court of any county desiring so to do, to subscribe to the capital stock of said company, and may issue bonds therefor, and levy a tax to pay the same, not to exceed one-twentieth of one percent upon the assessed value of taxable property for each year."

On the other hand, 17 and 18 of the General Railroad Law (Gen.Stat.Missouri 1865, p. 338) provide as follows:

"SEC. 17. It shall be lawful for the county court of any county, the city council of any city, or the trustees of any incorporated town, to take stock for such county, city, or town in, or loan the credit thereof to, any railroad company, duly organized under this or any other law of the state, provided that two-thirds of the qualified voters of such county, city, or town, at a regular or special meeting to be held therein, shall assent to such subscription."

"SEC. 18. Upon the making of such subscription by any county court, city, or town as provided for in the previous section, such county, city, or town shall thereupon become, like other subscribers to such stock, entitled to the privileges granted and subject to the liabilities imposed by this chapter, or by the charter of the company in which such subscriptions shall be made, and in order to raise funds to pay the installments which may be called for from time to time by the board of directors of such railroad, it shall be the duty of the county court, or city council or trustees of such town making such subscription to issue their bonds or levy a special tax upon all property made taxable by law for county purposes, and upon the actual capital that all merchants and grocers and other businessmen may have invested in business in the county, city, or town, to pay such installments, to be kept apart from other funds and appropriated to no other purpose than the payment of such subscription. . . . "

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MR. JUSTICE MATTHEWS, after stating the case as above reported, delivered the opinion of the Court.

It is not denied, and has been so decided by the Supreme Court of Missouri, that under 17 of the General Railroad Law, just cited, the county court of a county was authorized to subscribe to the stock of railroad companies, though created by special charter, provided the requisite assent of the qualified voters was duly obtained. *Cape Girardeau &c.; County v. Dennis,* 67 Mo. 438; *Chouteau v. Allen,* 70 Mo. 290. It is also not denied that, by virtue of 18 of the General Railroad Law, the special tax therein provided may be levied for the purpose of paying bonds issued in pursuance thereof, *and that without limit as to its amount.* United States v. County of Macon, 99 U. S. 582 . As the limit of taxation prescribed and permitted under 13 of the act incorporating the Missouri and Mississippi Railroad Company to be levied in payment of bonds issued thereunder was not to exceed one-twentieth of one percent upon the assessed value of the taxable property for each year, the contention of the respondents in the circuit court was that they were entitled to show by the recitals in the bonds themselves, in contradiction to those contained in the judgment founded upon them, that they were in fact issued under the charter of the corporation, and not under the general law. On this point the judgment of the circuit court was in their favor, denying to the relator the peremptory writ of mandamus, and this decision is now alleged as error for which the judgments should be reversed.

The question is whether the respondents below are estopped in this proceeding, by the judgment in favor of the relator against the County of Knox on the bonds, to deny that the bonds were issued in pursuance of 17 of chapter 63 of the General Statutes of Missouri of 1865. The averment to that effect in

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the petition in the action, if material and traversable, was confessed by the default. The judgment recites that the action is founded upon certain bonds and coupons

for interest thereon issued by said defendant and described in the petition. The averment as to the character of the bonds and the grounds and authority upon which they were founded, so as to constitute them legal obligations of the County of Knox, contained in the petition was clearly material to the plaintiff's cause of action. If the defendant had denied it by a proper pleading, the fact would have been put in issue and the plaintiff would have been bound to prove it.

It was part of the plaintiff's case to show not merely the execution of the bonds by the county authorities, but that they were issued in pursuance of a law making them the valid obligations of the county. The power to issue such securities does not inhere in a municipal corporation, so as to be implied from its corporate existence; it must be conferred either in express words or by reasonable intendment, and if the authority to issue them in a given case is challenged by a proper denial, the plaintiff is put to the proof. What it is necessary for him to prove it is proper for him to allege, and the allegation must be proven as made. It follows therefore that if a denial had been made in the action on the bonds in question, the averment that they were issued under 17 of chapter 63 of the General Statutes of Missouri of 1865, would have been material and traversable, and proof of the fact would have been necessary to support the recovery. In the absence of a denial, the fact, as stated in the petition of the plaintiff, is confessed by the default and stands as an admission on the record of its truth by the defendant. It is quite true that the judgment would have been the same whether the authority to issue the bonds was derived under the general statutes or under the charter of the railroad company, but good pleading required that the fact, whichever way it was, should be stated, and when stated, the averment must be proved as laid.

As this is a direct proceeding upon the judgment, its effect as an estoppel is determined by the first branch of the rule as laid down in *Cromwell v. County of Sac,* 94 U. S. 351 , 94 U. S. 352 .

That is:

"It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose."

And as stated in *Burlen v. Shannon,* 99 Mass. 200, 203:

"The estoppel is not confined to the judgment, but extends to all facts involved in it as necessary steps or the groundwork upon which it must have been founded."

It is nonetheless conclusive because rendered by default.

"The conclusiveness of a judgment upon the rights of the parties does in nowise depend upon its form, or upon the fact that the court investigated or decided the legal principles involved. A judgment by default or upon confession is in its nature just as conclusive upon the rights of the parties before the court as a judgment upon a demurrer or verdict."

Gifford v. Thorn, 9 N.J.Eq. 722. The bar is all the more perfect and complete in this proceeding because it is not a new action. Mandamus, as it has been repeatedly decided by this Court in such cases as the present, is a remedy in the nature of an execution for the purpose of collecting the judgment. *Riggs v. Johnson County,* 6 Wall. 166; *Supervisors v. Durant,* 9 Wall. 417; *Thompson v. United States,* 103 U. S. 484. Certainly nothing that contradicts the record of the judgment can be alleged in a proceeding at law for its collection by execution.

In *Ralls County v. United States,* 105 U. S. 733, the Chief Justice said:

"In the return to the alternative writ, many defenses were set up which related to the validity of the coupons on which the judgment had been obtained as obligations of the county. As to these defenses, it is sufficient to say it was conclusively settled by the judgment, which lies at the foundation of the present suit, that the coupons were binding obligations of the county, duly created under the authority of the charter of the railroad company, and as such entitled to payment out of any fund that could lawfully be raised for that purpose. It has been

in effect so decided by the Supreme Court of Missouri in *State v. Rainey,* 74 Mo. 229, and the principle on which the decision rests is elementary. "

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As the execution follows the nature of the judgment, and its precept is to carry into effect the rights of the plaintiff as declared by the judgment, with that mode and measure of redress which in such cases the law gives, so the mandamus in a case like the present can be limited in its mandate only by that which the judgment itself declares.

It was said, however, in *Ralls County v. United States,* 105 U. S. 733 , that

"while the coupons are merged in the judgment, they carry with them into the judgment all the remedies which in law formed a part of their contract obligations, and these remedies may still be enforced in all proper ways, notwithstanding the change in the form of the debt."

It is argued from this that, as the remedies to be resorted to for the purpose of enforcing the judgment are those given by the original contract, it is necessary to ascertain from the contract itself what those remedies are; but that is the very matter which has been already passed upon in the judgment, which decides, in the present case, by its recital, the character and extent of the obligation created by the law of the contract. It may well be that in a case where the record of the judgment is silent on the point, the original contract may be shown, notwithstanding the merger, to determine the extent of the remedy provided by the law for its enforcement; but that is not admissible where, as in this case, the matter has been adjudged in the original action. Indeed, in view of the nature of the remedy by mandamus as the means of executing the judgment, it is all the more material and important that the judgment itself should determine the nature of the contract and the extent of its obligation. The averment in the original petition that the bonds were issued under the authority of a particular statute becomes, therefore, an additional element in the plaintiff's case in that action for the purpose of showing with certainty what is the mode and measure of redress after judgment.

By the terms of the judgment in favor of the relator, it was determined that the bonds sued on were issued under the authority of a statute which prescribed no limit to the rate of taxation for their payment. In such cases, the law which authorizes the issue of the bonds gives also the

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means of payment by taxation. The findings in the judgment on that point are conclusive. They bind the respondents in their official capacity, as well as the county itself, because, as was said in *Labette County Commissioners v. Moulton,* 112 U. S. 217 ,

"they are the legal representatives of the defendant in that judgment, as being the parties on whom the law has cast the duty of providing for its satisfaction. They are not strangers to it as being new parties on whom an original obligation is sought to be charged, but are bound by it as it stands without the right to question it, and under a legal duty to take those steps which the law has prescribed as the only mode of providing means for its payment."

The return of the respondents, therefore, to the alternative writ of mandamus is insufficient in law, and the circuit court erred in not awarding to the relator a peremptory writ of mandamus. For that error,

The judgment is reversed and the cause remanded with directions to award a peremptory mandamus.

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