

West Vs. Camden

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Court : US Supreme Court

Decided On : May-19-1890

Appeal No. : 135 U.S. 507

Appellant : West

Respondent : Camden

Judgement :

West v. Camden - 135 U.S. 507 (1890)

U.S. Supreme Court West v. Camden, 135 U.S. 507 (1890)

West v. Camden

No. 278

Argued April 17-18, 1890

Decided May 19, 1890

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ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MARYLAND

SYLLABUS

An agreement by a director of a corporation to keep another person permanently in place as an officer of the corporation is void as against public policy, even though there was not to be any direct private gain to the promisor.

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A judgment will not be reversed because of an erroneous instruction to the jury, excepted to by the plaintiff, if the plaintiff could not recover in any event.

The case as stated by the Court was as follows:

This is an action at law brought in the Circuit Court of the United States for the District of Maryland by William C. West against Johnson N. Camden. The principal count of the declaration alleges that in December, 1877, the defendant engaged the plaintiff to serve as vice-president of the Baltimore United Oil Company of Baltimore County, a Maryland corporation, in which the defendant was largely interested, and promised, in consideration of the plaintiff's agreement to serve as such officer and of the conveyance and transfer to the company of the property used by the partnership firm of C. West & Sons, of which at the time the plaintiff was a member, in its business of refining petroleum, and dealing in the same and its products, and the consolidation of the business of that firm with the business of the company, which was greatly beneficial to the company and the defendant, that the plaintiff should be retained permanently in his position as such officer at the salary of at least \$5,000 per annum, the expected fulfillment of such promise on the part of the defendant being a material part of the consideration of such transfer and consolidation, and additional to the money consideration for the same; that the transfer and consolidation were carried out shortly thereafter by the plaintiff and the other members of the firm, according to the terms of such agreement; that the plaintiff faithfully discharged the duties of such office, and was duly paid therefor, from the time when his services were so engaged until the 15th of January, 1883, when he was removed from his position, without any sufficient reason, in violation of such promise of the defendant, and notwithstanding he tendered himself to the

company and to the defendant as ready and willing to continue the performance of such duties. The damages claimed are \$50,000. The defendant pleaded *nil debet* and *non assumpsit*.

The plaintiff then amended his declaration by averring that

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at the time of the making of such promise and of the acceptance of the same and of the performance by the plaintiff of his part of the agreement, the defendant was able, and proposed and continued to be able, and represented and guaranteed to the plaintiff that he was and would continue to be able, lawfully and properly to procure for and continue to the plaintiff such office and employment in the service of the company on the said terms, which office and employment it was for the interest and benefit of the company the plaintiff should have and continue to fill at said salary; that the defendant, down to and at the time of the removal of the plaintiff from said office, was and always continued to be able, lawfully and properly, and to the interest and advantage of the company, and with its consent and approval, and that of its stockholders, to retain the plaintiff, or cause or procure him to be retained at said salary and in the employment of the company, but that the defendant refused so to do, and procured the plaintiff to be removed from said office and from all employment in the service of the company and to be deprived of all salary and emolument therefrom.

The case was tried by a jury, which found a verdict for the defendant, on which a judgment was entered for him, with costs, to review which the plaintiff has brought a writ of error.

The Baltimore United Oil Company was incorporated under the general corporation law of the State of Maryland, on the 13th of December, 1877. The plaintiff and the defendant were both of them incorporators of the company, and both of them named as among the first directors in the certificate of incorporation. On the 15th of December, 1877, the members of the firm of C. West & Sons, including the plaintiff, executed an instrument in writing by which, for the

expressed consideration of \$137,500, they conveyed to the company certain land in Canton, Baltimore County, Maryland, used and occupied by them as a refinery, and all the property owned and used by them in the business of refining petroleum, with the goodwill of such business and the goodwill of their business at their store in the City of Baltimore. At a meeting of

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the board of directors of the company, the defendant, who, as trustee, subscribed for 5,059 shares out of the 6,000 shares which constituted the capital stock, was elected president, and the plaintiff, who subscribed for 458 shares, was elected vice-president at a salary of \$5,000 a year. The subscription made by the defendant for the 5,059 shares, as trustee, was made for the Standard Oil Company, which furnished the money that was paid for such shares, and they were immediately transferred to the Standard Oil Company by the defendant. The plaintiff held the said office, his compensation having been gradually increased by the Standard Oil Company to \$15,000 a year, until January 15, 1883, when that company, which still held that amount of stock, having decided to reduce the expenses and to change the management, a new board of directors was chosen not embracing the plaintiff, and another person, who agreed to serve without salary, was elected vice-president in his place. At the stockholders' meeting at which the new board of directors was chosen, the stock belonging to the Standard Oil Company was voted upon by trustees who then held it for that company, the defendant not being one of them. To the consideration of \$137,500 expressed in the conveyance above mentioned Messrs. Archbold and Vilas, two of the officers of the Standard Oil Company, who took part in negotiating the arrangement with C. West & Sons, agreed, on behalf of their company, to add \$12,500, bringing up the consideration paid to C. West & Sons to the sum of \$150,000, which agreement was carried out.

All the obligations ever entered into by the Baltimore United Oil Company, or by the Standard Oil Company, with the plaintiff or with the firm of C. West & Sons, have been fully complied with. This suit is not brought against either of those companies, nor is it brought by C. West & Sons, but by the plaintiff individually

against the defendant individually. The instrument of conveyance says nothing about any office or salary for the plaintiff in the Baltimore United Oil Company. The plaintiff knew, prior to the consummation of the sale by C. West & Sons, that the defendant was acting in

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the negotiations as the agent of the Standard Oil Company, and knew also, prior to the organization of the Baltimore United Oil Company, that the control of it and the disposition of its offices rested with the Standard Oil Company, and knew that the defendant represented that company in subscribing as trustee for the 5,059 shares of stock. He admits, in his testimony, that he believed that the defendant was acting for the Standard Oil Company in the transaction which resulted in the purchase from C. West & Sons, and in the agreement alleged to have been made. The case claimed by the plaintiff is that, in addition to the money consideration for the sale of the property, there was, under the circumstances above mentioned, a further consideration in the individual promise of the defendant to the effect alleged. The defendant denies the existence in fact of any such agreement on his part.

The plaintiff prayed the court to give to the jury the following instructions, each of which was refused, and the plaintiff excepted:

"1. Although the jury may find from the evidence that in negotiating with Messrs. C. West & Sons for the transfer of their property and business to the Baltimore United Oil Company of Baltimore County, the defendant acted as the agent of the Standard Oil Company, and was known to the plaintiff to be so acting, yet if the jury believe that the defendant was himself largely interested in the Standard Oil Company as a stockholder and in the organization of the Baltimore United Oil Company as a means of enlarging its business and profits and promoting his own consequent interest, and believed it necessary or important to the successful organization of the Baltimore United Oil Company, and the promotion of his own interests, that Messrs. C. West & Sons should sell to it their property and business and withdraw from competition with said company, and, so believing and in order

to induce the plaintiff to consent to such sale and withdrawal, the defendant made with the plaintiff, on his own individual behalf, as the plaintiff has testified, the contract to which likewise the plaintiff has testified, then the defendant's agency of the Standard Oil Company and plaintiff's knowledge of it,

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as hereinbefore stated, are no bar to plaintiff's recovery in this action."

"2. If the jury believe from the evidence that the defendant was himself largely interested in the Standard Oil Company, as a stockholder, and in the organization of the Baltimore United Oil Company of Baltimore County as a means of enlarging its business and profits, and promoting his own consequent interests, and believed it necessary or important to the successful organization of the Baltimore United Oil Company, and the promotion of his own interests, that Messrs. C. West & Sons should sell to it their property and business, and withdraw from competition with said company, and that the plaintiff was unwilling to unite with his co-partners in the sale and transfer of their said property and business to the said company, and the defendant, to induce the plaintiff to unite with his co-partners in selling and transferring their said business and property to the said company, contracted and agreed with the plaintiff individually that if he would so unite in said sale and transfer, he should have a permanent position in said company, as testified to by the plaintiff, and that, by reason of said contract and promise, and relying thereon, the plaintiff did, with the knowledge and consent of his co-partners as to said contract and agreement made with the plaintiff individually, unite with his co-partners in the sale and transfer of the said property and business, and did withdraw said business from competition with the said company, and shall further find that the defendant, in pursuance of said contract with the plaintiff, procured the appointment of the plaintiff to the position of vice-president of said company, and that the plaintiff accepted the same in accordance with said contract, and entered upon his duties as such officer, and continued in the discharge of the same for the term of five years, and until he was removed therefrom, and that such removal was made at the instance of or by the procurement of the defendant, without cause, and shall further find that the plaintiff was willing, and tendered

himself willing, to fulfill the duties of the said office, and to continue permanently to do so, then their verdict must be for the plaintiff for so much as they may find he has been damaged by the failure of

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the defendant to comply with his said promise and agreement."

The court instructed the jury as follows:

"If they find that the alleged contract between the plaintiff and the defendant that the said plaintiff should have permanent employment as an officer of the Baltimore United Oil Company at a salary of not less than \$5,000 a year, or as much as any other officer of said company received, was made in contemplation that the defendant was to be an officer of said company and to control a majority of its stock, and that, by the use of his official position and of the control of said ownership of stock, he was to retain said plaintiff in office and fix his salary, as admitted by the said plaintiff, then their verdict must be for the defendant upon the issues joined in this case."

The plaintiff excepted to such instruction.

That instruction was based upon the view that on the facts stated in it, the alleged contract was void as against public policy. On this point the court said:

"There is no allegation or proof that there was at any time such a contract for permanent employment directly with the company, or that the existence of such a contract with defendant was known to all the stockholders of the company, so that it resulted, if the contract be upheld, that whenever the question of retaining the plaintiff in the company's service at \$5,000 a year came to be voted on, the defendant's vote was to be influenced by the fact that he was to be liable to the plaintiff in large damages unless the company retained him. Either the company must pay him \$5,000 a year or the defendant must make it good to him out of his own pocket. This state of facts serves clearly to bring the case within the principle of the ruling in *Fuller v. Dame*, 18 Pick. 472, and *Guernsey v. Cook*, 120 Mass.

501 -- that is to say, it was a contract the purpose and effect of which was to influence the defendant as a stockholder and officer of the company, 'in the decision of a question affecting the private rights of others, by considerations foreign to those rights,' and the defendant, by the contract, was placed under direct and very powerful"

"inducement to disregard his duties to other members of the corporation, who had a right to

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demand his disinterested action in the selection of suitable officers."

"He was to be in a relation of trust and confidence, which would require him to look only to the best interests of the whole, uninfluenced by private contracts. We think this salutary rule is applicable in this case notwithstanding the alleged contract was not corruptly made for private gain on the part of the defendant. There were other stockholders in the company. The defendant and the Standard Oil Company, for whose benefit it is alleged the contract was made, were not all the stockholders, and it seems to us that it was certainly the right of those other stockholders to have the defendant's judgment, as an officer of the company, exercised with a sole regard to the interests of the company."

The court also instructed the jury as follows:

"Even if they find that the defendant verbally promised the plaintiff, as part of the consideration for the execution by him of the contract offered in evidence, dated December 15, 1877, that plaintiff should have permanent employment as an officer of the United Oil Company of Baltimore at a salary of not less than \$5,000 a year, or as much as any other officer of said company, and that plaintiff agreed that he would accept such employment and serve said company on those terms, the plaintiff cannot recover on such verbal contract, and their verdict must be for the defendant."

The plaintiff excepted to that instruction. The court also instructed the jury as follows:

"The plaintiff has offered no evidence legally sufficient to sustain the allegations contained in his amended declaration, and is not entitled to recover in this action."

The plaintiff excepted to that instruction, the court having remarked in regard to it:

"The alleged contract being, for the reasons we have already stated, presumably void on grounds of public policy, there must be affirmative proof to sustain the allegation of the amendment that the defendant"

"was and continued able, lawfully and properly, and to the interest and advantage of said company, and with and by its full consent and approval, and that of its stockholders, to retain the plaintiff in the employment of said company."

"We do not find any evidence to this

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effect which, in our judgment, could be properly submitted to the jury. "

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MR. JUSTICE BLATCHFORD delivered the opinion of the Court.

The first instruction virtually took the case from the jury, although it appears that, on a prayer by the defendant to the

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court to instruct the jury that the plaintiff had offered no evidence legally sufficient to entitle him to recover, and that their verdict must be for the defendant, the court refused to grant that prayer.

We think that under no circumstances could the plaintiff recover in this action, for the reason that the alleged contract was void as against public policy, and that the

first instruction to the jury was correct. From the plaintiff's own testimony it appears that his only reliance was on the use of the defendant's influence as an officer of the Baltimore United Oil Company, and on his control over the stock in that company held by the Standard Oil Company. The plaintiff says of the defendant:

"He was to be president of the company, and I supposed he would remain there and continue me and keep me in the position as vice-president and general manager. If he was to be president, and hold five-sixths of the stock, and continue to hold it, it was a surety that I should remain in the position."

The agreement alleged to have been made was one on the part of the defendant whereby he might be required to act contrary to the duty which, as an officer of the Baltimore United Oil Company, he owed to that company and to the stockholders other than the plaintiff. The same rule which is applicable to the case of a public office applies to the present case, although it does not appear that the defendant was to receive direct personal pecuniary compensation or gain for what he was to do. The plaintiff, on his own showing, dealt with the defendant in reference to the fiduciary relation which the latter bore to the stockholders both of the Standard Oil Company and of the Baltimore United Oil Company. The agreement alleged was an agreement which bound the defendant as to his future action as a director of the Baltimore United Oil Company, and an agreement to keep the plaintiff permanently in the position of vice-president of that company, irrespective of its interests. It amounted to a stipulation on the part of the defendant that no contingency should happen which should require a change of management and a reduction of expenses.

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The principle involved is well settled in regard to public employments. *Meguire v. Corwine*, [101 U. S. 108](#) , [101 U. S. 111](#) ; *Oscanyan v. Arms Co.*, [103 U. S. 261](#) , [103 U. S. 272](#) -273. The same doctrine has been applied to the directors of a private corporation, charged with duties of a fiduciary character to private parties, on the view that it is public policy to secure fidelity in the discharge of such duties.

Wardell v. Railroad Co., [103 U. S. 651](#) , [103 U. S. 658](#) ; *Woodstock Iron Co. v. Extension Co.*, [129 U. S. 643](#) , and cases there cited, especially *Fuller v. Dame*, 18 Pick. 472, 483. See also *Guernsey v. Cook*, 120 Mass. 501, and *Woodruff v. Wentworth*, 133 Mass. 309,314.

We think this principle is equally applicable on the ground of public policy although there was not to be any direct private gain to the defendant, for, as was said by the circuit court in this case, it was the right of the other stockholders in the Baltimore United Oil Company "to have the defendant's judgment, as an officer of the company, exercised with a sole regard to the interests of the company." A personal liability for damages on the part of the defendant in case the plaintiff should be removed after an agreement of the character alleged was calculated to be a strong incentive to the defendant to act contrary to the true interests of the company and of its other stockholders. *Bliss v. Matteson*, 45 N.Y. 22; 1 Morawetz Corp. 516, 519.

These views cover also the last instruction to the jury, and it becomes unnecessary to examine the question raised as to the second instruction, which was to the effect that, as the alleged contract was not in writing, the plaintiff could not recover upon it, because it was invalid under the fifth clause of the fourth section of the statute of frauds of Maryland, as being an agreement not to be performed within the space of one year from the making thereof, for, even though that might have been an erroneous instruction, it did no harm to the plaintiff, because he could not recover in any event. [Deery v. Cray](#), 5 Wall. 795, [72 U. S. 807](#) ; [Schools v. Risley](#), 10 Wall. 91, [77 U. S. 115](#) ; [Deery v. Cray](#), 10 Wall. 263, [77 U. S. 272](#) ; [Brobst v. Brock](#), 10 Wall. 519, [77 U. S. 528](#) ; [Barth v. Clise](#), 12 Wall. 400, [79 U. S. 403](#) ; [Tweed's Case](#), 16 Wall. 504, [83 U. S. 517](#) ; [Walbrun](#)

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v. Babbitt, 16 Wall. 577, [83 U. S. 580](#) -581; [Decatur Bank v. St. Louis Bank](#), 21 Wall. 294, [88 U. S. 301](#) ; *McLemore v. Louisiana State Bank*, [91 U. S. 27](#) , [91 U. S. 28](#) ; *Mobile & Montgomery Ry. Co. v. Jurey*, [111 U. S. 584](#) , [111 U. S. 593](#)

; *Lancaster v. Collins*, [115 U. S. 222](#) , [115 U. S. 227](#) , and cases there cited;
Evans v. Pike, [118 U. S. 241](#) , [118 U. S. 250](#) .

Judgment affirmed.

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