Hall Vs. Cordell

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Court : US Supreme Court

Decided On : Dec-07-1891

Appeal No. : 142 U.S. 116

Appellant : Hall

Respondent : Cordell

Judgement :

Hall v. Cordell - 142 U.S. 116 (1891)
U.S. Supreme Court Hall v. Cordell, 142 U.S. 116 (1891)

Hall v. Cordell

No. 90

Argued November 12, 1891

Decided December 7, 1891

142 U.S. 116

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

SYLLABUS

This Court is bound by the finding of a jury in an action at law, properly submitted to them on conflicting evidence.

A bill of exchange is not negotiated within the meaning of 537, Rev.Stats. Missouri ed. 1879, 723, ed. 1889, while it remains in the ownership or possession of the payee.

The obligation to perform a verbal agreement, made in Missouri, to accept and pay, on presentation at the place of business of the promisor in Illinois, all drafts drawn upon him by the promisee for livestock to be consigned by the promisee from Missouri to the promisor in Illinois, is to be determined by the law of Illinois, the place of performance, and not by the law of Missouri.

The case was stated by the court as follows:

This is an action of assumpsit. It is based upon an alleged verbal agreement made on or about April 1, 1886, at Marshall, Missouri, between the defendants in error, plaintiffs below, doing business at that place as bankers, under the name of Cordell & Dunnica, and the plaintiffs in error, doing business at the Union Stockyards, Chicago, Illinois, under the name of Hall Bros. & Co. There was a verdict and judgment in favor of the plaintiffs for $5,785.79.

The alleged agreement was, in substance, that Hall Bros. & Co. would accept and pay, or pay on presentation, all drafts made upon them by one George Farlow in favor of Cordell & Dunnica, for the cost of any livestock bought by Farlow and shipped by him from Missouri to Hall Bros. & Co. at the Union Stockyards at Chicago.

There was proof before the jury tending to show that on or about July 13, 1886, Farlow shipped from Missouri nine carloads of cattle and one carload of hogs, consigned to Hall Bros. & Co. at the Union Stockyards, Chicago; that such cattle and hogs were received by the consignees, and by them

were sold for account of Farlow; that out of the proceeds they retained the amount of the freight on the shipment, the expenses of feeding the stock on the way and at the stockyards, the charges at the yards and of the persons who came to Chicago with the stock, the commissions of the consignees on the sale, the amount Farlow owed them for moneys paid on other drafts over and above the net proceeds of livestock received and sold for him on the market, and $2,000 due from Farlow to Hall Bros. & Co. on certain past-due promissory notes given for money loaned to him; that at the time of the above shipment, Farlow, at Marshall, Missouri, the place of agreement, made his draft, of date July 13, 1886, upon Hall Bros. & Co. at the Union Stockyards, Chicago, in favor of Cordell & Dunnica, for $11,274, the draft stating that it was for the nine carloads of cattle and one carload of hogs; that this draft was discounted by Cordell & Dunnica, and the proceeds placed to Farlow's credit on their books; that the proceeds were paid out by the plaintiffs on his checks in favor of the parties from whom he purchased the stock mentioned in the draft, and for the expenses incurred in the shipment; that the draft covered only the cost of the stock to Farlow; that, upon its presentation to Hall Bros. & Co., they refused to pay it, and the same was protested for nonpayment, and that subsequently Cordell & Dunnica received from Hall Bros. & Co. only the sum of $5,936.55, the balance of the proceeds of the sale of the above cattle and hogs, consigned to them as stated, after deducting the amounts retained by the consignees out of such proceeds on the several accounts above mentioned.

MR. JUSTICE HARLAN, after stating the facts in the foregoing language, delivered the opinion of the Court.

There was evidence on behalf of the defendants tending to show that no such agreement was made as that alleged. But the issues of fact were fairly submitted to the jury, and we must assume on this writ of error that the jury found from the evidence that the alleged agreement was made between the parties.

Our examination must be restricted to the questions of law involved in the rulings of the court below. And the only one which, in our judgment, it is necessary to notice is that arising upon the instructions asked by the defendant, and which the court refused to give, to the effect that the agreement in question, having been made in Missouri, and not having been reduced to writing, was invalid under the statutes of that state, and could not be recognized in Illinois as the basis of an action there against the defendants.

Page 142 U. S. 119

The statute of Missouri referred to is as follows:

" 533. No person within this state shall be charged as an acceptor of a bill of exchange unless his acceptance shall be in writing, signed by himself or his lawful agent."

" 534. If such acceptance be written on a paper other than the bill, it shall not bind the acceptor except in favor of a person to whom such acceptance shall have been shown and who, upon the faith thereof, shall have received the bill for a valuable consideration."

" 535. An unconditional promise in writing to accept a bill before it is drawn shall be deemed an actual acceptance in favor of every person to whom such written promise shall have been shown and who upon the faith thereof shall have received the bill for a valuable consideration."

" 536. Every holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill, and a refusal to comply with such request shall be deemed a refusal to accept, and the bill may be protested for nonacceptance."

" 537. The preceding sections shall not be construed to impair the right of any person to whom a promise to accept a bill may have been made, and who on the faith of such promise shall have drawn or negotiated the bill, to recover damages of the party making such promise, on his refusal to accept such bill."

1 Rev.Stats.Missouri, ed. 1879, p. 84; ed. 1889, p. 253, 719, 723; Wagner's Stats.Missouri, 1872, p. 214, 1 to 5.

The contention of the plaintiffs in error is that the rights of the parties are to be determined by the law of the place where the alleged agreement was made. If this be so, it may be that the judgment could not be sustained; for the statute of Missouri expressly declares that no person within that state shall be charged as an acceptor of a bill of exchange unless his acceptance be in writing. And the statute, as construed by the highest court of Missouri, equally embraces within its inhibitions an action upon a parol promise to accept a bill, except as provided in section 537. *Flato v. Mulhall,* 72 Mo. 522, 526; *Rousch v. Duff,* 35 Mo. 312, 314. But if the law of Missouri governs, this action could not be maintained under that section, because, as held in *Flato v. Mulhall,* above cited, the plaintiffs, being the payees in the bill

Page 142 U. S. 120

drawn by Farlow upon Hall Bros. & Co., could not, within the meaning of the statute, be said to have "negotiated" it. The Missouri statute is a copy of a New York statute, in respect to which Judge Duer, in *Blakiston v. Dudley,* 5 Duer 373, 377, said:

"We think that to negotiate a bill can only mean to transfer it for value, and that it is a solecism to say that a bill has been negotiated by a payee who has never parted with its ownership or possession. The fact that the plaintiffs had given value for the bill when they received it only proves its negotiation by the drawer, its negotiation to, and not by, them. . . . Their putting their names upon the back of the bill was not an endorsement, but a mere authority to the agent whom they employed to demand its acceptance and payment. The manifest intention of the legislature in 10 [similar to 537 of the Missouri statutes] was to create an exception in favor of those who, having transferred a bill for value on the faith of the promise of the drawee to accept it, have, in consequence of his refusal to accept, been rendered liable, and been subjected to damages, as drawers or endorsers."

The plaintiffs in error therefore cannot rest their case upon section 537.

We are however of opinion that upon principle and authority, the rights of the parties are not to be determined by the law of Missouri. The statute of that state can have no application to an action brought to charge a person in Illinois upon a parol promise to accept and pay a bill of exchange payable in Illinois. The agreement to accept and pay, or to pay upon presentation, was to be entirely performed in Illinois, which was the state of the residence and place of business of the defendants. They were not bound to accept or pay elsewhere that at the place to which, by the terms of the agreement, the stock was to be shipped. Nothing in the case shows that the parties had in view, in respect to the execution of the contract, any other law than the law of the place of performance. That law consequently must determine the rights of the parties. *Coghlan v. South Carolina Railroad Co., ante,* 142 U. S. 101 , and the authorities there cited. In this connection it is well to state that in *New York & Virginia State Stock Bank v.*

Page 142 U. S. 121

Gibson, 5 Duer 583, a case arising under the statute of New York above referred to, the court said:

"Those provisions manifestly embrace all bills, wherever drawn, that are to be accepted and paid within this state, and were the terms of the statute less explicit than they are, the general rule of law would lead us to the same conclusion -- that the validity of a promise to accept a bill of exchange depends upon the law of the place where the bill is to be accepted and paid."

Citing *Boyce v. Edwards,* 4 Pet. 111.

Looking, then at the law of Illinois, there is no difficulty in holding that the defendants were liable for a breach of their parol agreement, made in Missouri, to accept and pay, or to pay upon presentation, in Illinois, the bills drawn by Farlow pursuant to that agreement in favor of the plaintiffs. It was held in *Scudder v. Union National Bank,* 91 U. S. 406 , 91 U. S. 413 , that in Illinois, a parol acceptance of, or a parol promise to accept, upon a sufficient consideration, a bill

of exchange was binding on the acceptor. *Mason v. Dousay,* 35 Ill. 424, 433; *Nelson v. First Nat. Bank of Chicago,* 48 Ill. 36, 40; *Sturges v. Fourth National Bank of Chicago,* 75 Ill. 595; *St. Louis National Stock Yards v. O'Reilly,* 85 Ill. 546, 551.

The views we have expressed were substantially those upon which the court below proceeded in its refusal of the defendants' requests for instructions, as well as in its charge to the jury. The suggestion that there was a material variance between the averments of the original and amended declaration and the proof adduced by the plaintiffs is without foundation. The real issue was fairly submitted to the jury, and their verdict must stand.

Judgment affirmed.

MR. JUSTICE GRAY was not present at the argument, and did not participate in the decision.