No. 12302

Supreme Court of Illinois

Fanstock, et al.

---

vs.

Quanier.

71641 7

Samuel Fahnestock
Wm F Moeller
vs
Archibald A. Dramer
Morgan L Ott
John Lentz
} Att,

Moeller on appeal below pleaded in Abatement that he was not about to depart &c —

Issue —

Evidence

On the 17th January 1852. Moeller owned a contingent interest in a Mercantile establishment in Marshall County in which Wm Menimon was a Partner. Moeller & Menimon made a contract in writing (Bona fide) by which Moeller sold his interest to Menimon writing - Recited that Moeller & Menimon ~~agreed to go~~ then intended to go to California in spring of 1852, to examine the country. Menimon agreed with Moeller to pay all the expenses incurred by Moeller while on said Journey from Lacon to San francisco —

Proved by parol that at the time of making said agreement - they made an Estimate of Probable value of Moellers contingent interest supposed it worth $300.00 - also at time supposed that expenses to California would be $300.00

[12302-1]

Construction of Contract

Moeller had an interest in the goods worth $300. Merriman Bought that interest. Both then intended to go to California — Merriman agreed to pay Moellers Expenses Estimated at $300.00 while on the Journey — and took the property.

Now this is all there is of this contract. There was no agreement that Moeller should go to California — But it was intended that both would go.

The $300.00 was not payable upon the Contingency that Moeller should go to California. His going there constituted no portion of the consideration of the purchase. It is not even stated that Moeller & Merriman intended to travel together, and the plain meaning of the contract is that Merriman will pay Moeller what a mans reasonable expenses would be on the Route from Lacon to California

It is not a fair construction of the contract that if it should so happen that Moeller should not go to California, that Merriman is to have his $300.00 interest in the goods for nothing

Suppose that the interest had been $3000.00 instead of $300.00 — and that the expenses on the journey were to be paid and the residue upon Moellers arrival at San Francisco: Must he lose the whole because he does not, or for some reason cannot go to California?

Suppose two men agree to set out on a Journey together — One has a watch which the other wishes to buy — He says here is my watch worth about $100.00 — pay my expenses on the journey and take the watch — It is agreed to and the watch handed over to the purchaser

The man who sold his watch is taken sick or breaks a limb, and cannot make the journey. Is he bound to lose his watch — or travel over the route proposed before he can receive his pay for the same? Does it make any difference to the purchaser of the watch whether he pays for it in paying expenses along the road in small sums — or all at once, at some future time? Or does the performance of the Contemplated Journey constitute any portion of the Consideration of the purchase of the property

Any other construction than the one we put upon this contract, would be manifestly inequitable and unjust and would enable Menimon to get Moellers property — without any Consideration — and place the same beyond the reach of Moellers creditors

It is stated in the bill of exceptions that the Conveyance or sale from Moeller to Menimon was upon a consideration "deemed bona fide by the court"

This Court is not necessarily bound by such Opinion of the circuit court relative to this transaction - And if from the circumstances this court is Of the Opinion that this was a contrivance between Moeller & Merriman to place Moellers interest in the goods beyond the reach of his creditors; for such fraud Merriman as Garnishee, being indebted to Moeller for the goods. would become instantly liable to the creditors of Moeller - Because, he has bought Moellers property - attempted to make a contract by which creditors could not reach it; and by which Moeller could use it to pay his expenses to California.

Suppose the contract had been to pay his expenses on the Journey, and support him and his family for One year after his arrival in California? and the goods or interest purchased had been considered sufficient for that purpose - Can men be permitted to resort to such shifts and subterfuges to remove their property from the State to the injury of creditors? Moeller had an interest in the goods sold which was subject to attachment - I deny, that he can make any sale, so that the purchaser (; the purchase money remaining unpaid;) would not be liable as Garnishee

[10302-3]

The ~~purchase~~ Money due from Merrimon to Moeller was not payable upon a Contingency. These cases of Contingencies are all cases where the consideration for the agreement to pay, is to happen in future - not when it has passed.

When the property to be attached is in possession of the Garnishee - and when the debt is due and owing, though payable in future, or at a particular place or places; whether in London - on the road to, or in California; the debt may be attached, and these circumstances do not constitute the legal Contingency, contemplated in the law.

It is only when the debt may never be due - or the consideration for the promise may never pass, that creates the Contingency, upon which a garnishee is not chargeable.

If there is a debt, it may be attached, although the amount and time of payment are uncertain.

These principles are sustained by the cases of

Guild vs Holbrook & Trustee. 11 Pick. 104.
Thorndike vs Dewolf. " 6 " 122
Blake vs Williams " 6 " 315
Clark vs Brown " 14. Mass 271
Willard vs Sheafe 4 " 334.

A. H. E. Purple
for Defts

No. 4

Hamtrault et al

vs

Francisco Otero

Suggestions

Pumpley

12302

Filed July 27th 1853.

[illegible] Clk.

By [illegible] Depy.

12302

Samuel Hanstock
Wm. F. Mochler late
Partners &c under the
name of S. Hanstock &c
vs
Archibald Quamier
Morgan L Ott. John. Gentz
Partners &c. Quamier Ott &c

Supreme Court
Term 1853

Brief Points &c.

1st The Sum due from Menimon to Pltffs was credits & Effects in Menimons hands liable to attachment.

- Subjects of Attachment.

Lands, tenements, goods, Chattels, rights. credits, moneys and Effects.

Rev. Statutes p 63 - Sec. 1

For what Garnishees liable to answer.

Property Effects, Choses in action in possession or Power - or - who are in any wise indebted to such defendant.

Rev. Statutes p 66. Sec. 12.

[12302-5]

Ind. A Hamilton may be charged whenever he is liable in an action to the principal
14. Mass. 271.
Willard vs Sheafe 4. Mass 234-5
Thorndike vs Godfrey 6 Pick. 122.
Guild vs Holbrook 11 " 104.
6 " 315
Sturtevant vs Robinson 18 " 179-180

1302

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Samuel Hanstock Et al,
vs
Archibald Dearmin Et al.

Points
&
Brief

Filed Jul 29th 1853
L. Leland Clk.
By P. K. Leland Depy,