

De Valengin's Administrator Vs. Duffy

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Appeal No. : 39 U.S. 282

Appellant : De Valengin's Administrator

Respondent : Duffy

Judgement :

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De Valengin's Administrator v. Duffy

39 U.S. (14 Pet.) 282

ERROR TO THE CIRCUIT COURT OF THE UNITED

STATES FOR THE DISTRICT OF MARYLAND

Syllabus

It has been frequently held that the device of covering property as neutral when in truth it was belligerent is not contrary to the laws of war or of nations. Contracts made with underwriters in relation to property thus covered have always been enforced in the courts of a neutral country where the true character of the property, and the means taken to protect it from capture have been fairly represented to the insurers. The same doctrine has always been held where false papers have been used to cover the property, provided the underwriter knew or was bound to know, that such stratagems were always resorted

to by the persons engaged in that trade. If such means may be used to prevent capture, there can be no good reason for condemning with more severity the continuation of the same disguise after capture in order to prevent the condemnation of the property or to procure compensation for it when it has been lost by reason of the capture. Courts of the capturing nation would never enforce contracts of that description, but they have always been regarded as lawful in the courts of a neutral country.

Whatever property or money is lawfully recovered by the executor or administrator after the death of his testator or intestate in virtue of his representative character he holds as assets of the estate, and he is liable therefor in such representative

character to the party who has a good title thereto. The want of knowledge or the possession of knowledge on the part of the administrator as to the rights and claims of other persons upon the money thus received cannot alter the rights of the party to whom it ultimately belongs.

The owner of property or of money received by an administrator may resort to the administrator in his personal character and charge him *de bonis propriis* with the amount thus received. He may do this or proceed against him as executor or administrator, at his election. But whenever an executor or administrator, in his representative character, lawfully receives money or property, he may be compelled to respond to the party entitled in that character, and shall not be permitted to throw it off after he has received the money in order to defeat the plaintiff's action.

In the case of a factor who sells the goods of his principal in his own name upon a credit and dies before the money is received, if it is afterwards paid to the administrator in his representative character, the creditor would be entitled to consider it as assets in his hands and to charge him in the same character in which he received it. The debtor -- that is to say the party who purchased from the factor without any knowledge of the true owner and who paid the money to the administrator under the belief that the goods belonged to the factor -- is unquestionably discharged by this payment, yet he cannot be discharged unless he pays it to one lawfully authorized to receive it, except only in his representative character.

In the Circuit Court of Maryland, John H. Duffy, the defendant in error, instituted a suit against the administrators of Albert P. De Valengin for the recovery of a sum of money which he claimed to belong to him, being a portion of the indemnity paid by the government of Brazil for the capture and loss of the brig *President Adams* by a Brazilian cruiser in 1828.

John H. Duffy, a citizen of the United States domiciled at Buenos Ayres in 1828, shipped a quantity of hides and other articles of merchandise in 1828 on board the brig *President Adams*, commanded and part owned by Albert P. De Valengin, a citizen of Baltimore,

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for Gibraltar. The government of Brazil and that of Buenos Ayres were then at war.

For the better security of the property from Brazilian capture, the property was shipped in the name of De Valengin, and soon after she sailed she was captured by an armed vessel of Brazil and carried into Monte Video. There both vessel and cargo were totally lost.

Under an agreement between John H. Duffy and Captain De Valengin, a claim for the cargo as well as the vessel was made by him on the government of Brazil, for indemnity. The ownership of John H. Duffy was concealed in this application, as his property was liable to capture by the cruisers of Brazil, he being domiciled at Buenos Ayres. Captain De Valengin died before anything was recovered from the government of Brazil for the *President Adams* and cargo, and a certain James Neale, who had become his administrator under letters of administration granted in Maryland, prosecuted the claim as the representative of De Valengin, and was at length paid the

indemnity in Baltimore by the aid of Mr. James Birkhead of Rio de Janeiro, who remitted it to him from that place. The proceeds of the property remitted by Mr. Birkhead were returned in an inventory filed by Mr. Neale as administrator in the Orphans Court at Baltimore, as the estate of De Valengin.

A suit for the recovery of the amount claimed by John H. Duffy was instituted in the circuit court of the United States against James Neale as the administrator of De Valengin, and he having died before the trial of the cause, and the plaintiffs in error having taken out letters of administration *de bonis non* to the estate of De Valengin, they were summoned, and they appeared and took defense in the action.

In the declaration in the action, the only court applicable to the controversy between the parties to the suit, was that for money had and received by James Neale, the administrator of De Valengin, for the use of the plaintiff. On the issues of *nonassumpsit* and *plene administravit*, the jury found for the plaintiff on the first, and for the defendants on the second count. The circuit court entered a judgment on the first plea for the amount found by the jury, fourteen thousand and thirteen dollars and sixty-seven cents, the judgment to bind assets.

From this judgment the defendants prosecuted this writ of error.

On the trial of the cause in the circuit court, the defendants took a bill of exceptions to the decisions of the court on six different propositions or prayers submitted by their counsel for the opinion of the court. The bill of exceptions contains the whole evidence in the cause. All the prayers of the counsel for the defendants were refused by the court.

The opinion of the Supreme Court on the matters presented under the writ of error was given on two propositions into which all those submitted in the circuit court were considered to be resolved.

"1. That the agreement between Captain De Valengin and John

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H. Duffy, under which De Valengin was to claim remuneration from the Brazilian government for the loss of the brig *President Adams* and her cargo on the ground of its being neutral property, when in truth the cargo was the property of John H. Duffy, and therefore belligerent, and liable to capture by the laws of nations, was fraudulent and immoral, and that the courts of justice of the United States will not assist a party to recover money due on such agreement."

"2. That if the money belonged to John H. Duffy, the action would not lie against Neale, as administrator, nor the money be assets in his hands of De Valengin's estate; that his return to the orphans court cannot alter the character of the transaction, and that this suit ought to have been continued against Neale's administrator, and not against the representatives of De Valengin. "

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MR. CHIEF JUSTICE TANEY delivered the opinion of the Court.

It appears from the record that John H. Duffy, an American citizen, being engaged in commerce and domiciled at Buenos Ayres, shipped a cargo of hides and lard to Gibraltar on board the brig *President Adams* in 1828. Buenos Ayres was then at war with Brazil. The *President Adams* was an American vessel, and De Valengin, her captain, was a citizen of the United States. He was also part owner of the vessel.

In order to protect the cargo from capture by the Brazilians, it was shipped as the property of De Valengin, and the bill of lading and other papers in relation to it were made out in his name. The brig was, however, captured on her voyage by a Brazilian cruiser and was wrecked and the vessel and cargo totally lost near Monte Video while in possession of the captors, who were endeavoring to carry her into port.

De Valengin being the ostensible owner of the cargo, he, with the consent of Duffy, prosecuted a claim for remuneration from the Brazilian government, insisting that the property belonged to him, that it was neutral property and therefore unlawfully captured. De Valengin died before he recovered anything, and after his death, James Neale took out letters of administration on his estate

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in the City of Baltimore, and continued to prosecute the claim upon the ground that the property was De Valengin's, and at length succeeded in obtaining compensation for it from the Brazilian government. The money was paid to Neale's agent at Rio de Janeiro and invested in coffee and shipped to him to Baltimore, where he received and took possession of it as property belonging to De Valengin's estate, and as his administrator. It was duly appraised as the property of De Valengin and returned as such by Neale to the orphans court in January, 1834, and afterwards was sold by him, and the money received. It does not appear from the evidence whether Neale had or had not any knowledge of the interest of Duffy in the cargo while he was prosecuting the claim against the Brazilian government or when he received the compensation for it.

In March, 1834, Duffy brought suit against Neale for the money he had thus received. The suit was against Neale as administrator of De Valengin. In 1836, Neale died, the suit being still pending, and after his death, process was issued against the present plaintiffs in error, who are the administrators *de bonis non* of De Valengin, in order to make them defendants to the suit which he had instituted against Neale in his lifetime as administrator as aforesaid.

The declaration was amended by the plaintiff after the appearance of the administrators *de bonis non*, and the only count applicable to the case as it appears in the testimony was that for money had and received by Neale, as administrator of De Valengin, to and for the use of the plaintiff. The defendants pleaded *nonassumpsit* and plene administravit, upon which issues were joined, and the jury found for the plaintiff on the first issue and for the defendants on the second, and the judgment was entered for the amount found due by the jury in the usual form, to bind assets when they shall arise.

At the trial, several instructions were asked for by the defendants, which were refused by the court. They may all, however, be resolved into two.

1. That the agreement between De Valengin and Duffy, to claim remuneration from

the Brazilian government upon the ground that it was neutral property when in truth it was Duffy's, and therefore, belligerent and liable to capture by the laws of nations, was fraudulent and immoral, and that the courts of justice of this country will not assist a party to recover money due on such an agreement.

2. That if the money belonged to Duffy, the action would not lie against Neale as administrator, nor the money be assets in his hands, of De Valengin's estate; that his return to the orphans court cannot alter the character of the transaction, and that the suit ought to have been continued against Neale's administrator, and not against the representatives of De Valengin.

The first question may be disposed of in a few words. It has been frequently held that the device practiced in this case of covering the property as neutral when in truth it was belligerent

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is not contrary to the laws of war or the laws of nations. And contracts made with underwriters in relation to property thus covered have always been enforced in the courts of a neutral country when the true character of the property and the means taken to protect it from capture have been fairly represented to the insurer. The same doctrine has always been held where false papers were used to cover the property, provided the underwriter knew or was bound to know that such stratagems were always resorted to by persons engaged in that trade. And if such means may be used to prevent a capture, there can be no good reason for condemning with more severity the continuation of the same disguise after capture in order to prevent the condemnation of the property or to procure compensation for it when it has been lost by reason of the capture. It is true the courts of the capturing nation would never enforce contracts of that description, but they have always been regarded as lawful in the courts of a neutral country.

The second question is one of more nicety, and the cases are not entirely reconcilable to each other. There are doubtless decisions which countenance to doctrine that no action will lie against an executor or administrator in his representative character except upon some claim or demand which existed against the testator or intestate in his lifetime, and that if the claim or demand wholly accrued in the time of the executor or administrator, he is liable therefor only in his personal character. But upon a full consideration of the nature and of the various decisions on the subject, we are of opinion that whatever property or money is recovered or received by the executor or administrator after the death of his testator or intestate in virtue of his representative character he holds as assets of the estate, and he is liable therefor in such representative character to the party who has a good title thereto. In our judgment, this, upon principle, must be the true doctrine.

In the case of a factor who sells the goods of his principal in his own name upon a credit and dies before the money is received, if it is afterwards paid to the administrator in his representative character, would not the creditor be entitled to consider it as assets in his hands and to charge him in the same character in which he received it? The want of knowledge or the possession of knowledge on the part of the administrator as to the rights or claims of other persons upon the money thus received cannot alter the rights of the party to whom it is ultimately due. The debtor -- that is to say, the party who purchased from the factor without any knowledge of

the true owner and who pays the money to the administrator under the belief that the goods belonged to the factor himself -- is unquestionably discharged by this payment. Yet he cannot be discharged unless he pays it to one lawfully authorized to receive it, and the party to whom he pays cannot be lawfully authorized to receive except only in his representative character. If he is

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authorized to receive in that character, why should he not be liable in that character?

Again, if a note had been taken by the factor payable to himself and after his death his administrator sued upon it in his representative capacity, and recovered the money, would he not be liable to the principal in the same character in which he had by the judgment of a court recovered the money? It would be difficult to reconcile the contrary doctrine to any sound principles of reason or to find any countenance for it in analogous cases.

We do not mean to say that the principal may not in such cases resort to the administrator in his personal character, and charge him *de bonis propriis* with the amount thus received. We think he may take either course at his election, but that whenever an executor or administrator, in his representative character, lawfully received money or property, he may be compelled to respond to the party entitled in that character, and shall not be permitted to throw it off after he has received the money in order to defeat the plaintiff's action.

In this case, De Valengin was the bailee of the goods shipped by Duffy, and had a special property in them, and it was his duty to take all proper measures for their safety and preservation. He had a right to sell and transfer the goods in his own name and as his own property. The Brazilian government, by agreeing to pay the money, admitted that the debt was justly due to him on account of the destruction of this cargo. Whether that government was deceived or not is another question, and does not affect the point now to be decided. The admission of the debt as due to De Valengin places this case upon the same principles with that of a factor before mentioned who had sold the property of his principal in his own name and died before the receipt of the money. If the administrator is lawfully entitled to receive it in his representative character and does so receive it, he is liable in the same character to the party entitled. Neale prosecuted the claim and received the money as the administrator of De Valengin. He must account for it in the same character.

If this transaction had taken place before the Act of Assembly of Maryland of 1820, ch. 174, the suit must unquestionably have been continued against Neale's representatives, and could not have been sustained against the administrators *de bonis non* of De Valengin. Because the property which Neale had received as administrator was converted into money in his lifetime, and must therefore have been accounted for by his administrator, and would not have passed to the administrator *de bonis non* of the former intestate. But by the third section of the act of 1820, ch. 174, the administrator *de bonis non* is entitled to the bonds, notes, accounts, and evidences of debt which the deceased executor or administrator may have taken, and to the money in his hands in his representative character, and he is authorized to recover them in the manner there pointed out. And the money now in controversy being, as we have already said,

lawfully in the hands of Neale in his representative character, the administrators *de bonis non* are entitled to it, and as they are authorized to recover the fund out of which the money due to Duffy is to be paid, he had a right to make them parties to the suit which he had instituted against the first administrator and to continue it against them. They are not injured or in any manner placed in danger by this proceeding. For they are not liable unless the money is recovered from Neale's representatives or securities, provided there is no negligence or breach of duty on their part.

The motion in arrest of judgment offered in the circuit court, if it had not been objectionable upon other grounds, was evidently too late by the rules of the court, and on that account, properly overruled.

The judgment of the circuit court is therefore

Affirmed.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the District of Maryland, and was argued by counsel. On consideration whereof it is ordered and adjudged by this Court that the judgment of the said circuit court in this cause be and the same is hereby affirmed with costs and damages at the rate of six percentum per annum.