FELICHY v. HAMILTON.

Case No. 4,719.
{1 Wash. C.C. 491.}[1]

Circuit Court, D. Pennsylvania. Oct. Term, 1806.

PARTNERSHIP—WHAT CONSTITUTES—COMMUNITY OF INTERESTS.

1. To constitute a partnership, there must be a community of interests—a participation in profit and loss; and this joint interest must continue to the time of the sale of the articles in which the parties are thus interested.

[Cited in Hunt v. Oliver, 118 U. S. 221, 6 Sup. Ct. 1088.]

[Cited in Edwards v. Tracy, 62 Pa. St. 377.]

2. It is the joint interest in the whole, which constitutes the joint liability of all, for the contracts of one; and not the credit which is given to all, as in the instance of a dormant partner.

3. If A & B purchase an article on joint account, and ship it, they are jointly liable for advances made by the consignee on account of this joint concern.

The two Mackeys, and the defendant, in 1795, shipped a quantity of snuff to the plaintiff, at Leghorn, and the invoice and bill of lading, stated it to be on their account and risk, and consigned to the plaintiff to sell. In pursuance of a general permission, given by the plaintiff to the Mackeys, who had before done business with them, to draw on London for two-thirds of the invoice price of all goods consigned to the plaintiffs, the Mackeys drew upon Robert Hunter, the friend and agent of the plaintiff in London, for two-thirds of the amount of this shipment; and although the plaintiff found the snuff to be altogether unsaleable and worthless, he nevertheless directed Hunter to take care of the bills. Some of them were paid[1] and some protested, in consequence of the plaintiff's not providing, at the time, funds for the reimbursement of Hunter, from which he was prevented, the French having taken possession of Leghorn. The plaintiff corresponded with the Mackeys alone, upon the subject of this shipment, without once mentioning the name of Hamilton. They charge the advances, made on account of it,

to them, in sundry accounts; and in one, they credit that account with a sum previously due from them, to the Mackeys, on their separate account; no objection was ever made to the mode of stating the account by the Mackeys, during their solvency. They afterwards became bankrupts, and this action is brought to recover the whole advances made on the snuff account, against Hamilton.

The only question of law argued before the jury, was, whether Hamilton was liable, as a partner with the Mackeys. It was contended that he was not; because, it being agreed between the Mackeys and Hamilton, that the former was to transact the whole business of the sale in Europe, Hamilton was deprived of one of those powers, or of the whole, which is essential to a co-partnery. 2d. That all was done in the names, and on the credit of the Mackeys. 3d. The plaintiff claimed of Hamilton only one-half of the advances. Cases cited, {Scottin v. Stanley} 1 Dall. {1 U. S.} 129; Cowp. 636, 448; {Hollingsworth v. Hamelin} 1 Dall. {1 U. S.} 151; {Tillier v. Whitehead} Id. 269. Wats. Partn. 253, 80; 1 Ld. Raym. 666; 2 Ld. Raym. 1484; Salk. 126, 292; Wats. 58, 59.

WASHINGTON, Circuit Justice. To constitute a partnership, there must be a community of interest; a participation in profit and loss; and this joint interest must continue to the time of the sale, as well as to the purchase. This joint interest in the whole, is what constitutes the liability of all for the contracts of one. If the Mackeys and Hamilton purchased on joint account, and shipped the snuff to be sold on joint account, then they are liable jointly for the advances made by the plaintiffs, on account of this joint concern. The measure of their interest in the snuff, will be the measure of their liability for the advances. If they were not jointly concerned in the sale, the conduct of the Mackeys, in making the shipment on joint account, if not done with the knowledge of Hamilton, cannot make it a partnership transaction. But, if they were jointly concerned in the sale, then the plaintiff, corresponding only with the Mackeys, did not discharge Hamilton. The responsibility of one partner, for the contracts of another, is not solely on the ground of the credit being given to all, which it is not in the case of a dormant partner; but because, that being to share the profits, they must share the loss. Neither would the agreement of one partner with another, not to act in the business; whatever may be the effect of this as between the parties, it is nothing to third persons; neither ought the plaintiff to be affected by his having claimed only a moiety from Hamilton, For, if there was really a partnership, it was no more than a mistake of his legal rights.

Verdict for plaintiff.

[1] {Originally published from the MSS. of Hon. Bushrod Washington, Associate Justice of the Supreme Court of the United States, under the supervision of Richard Peters, Jr., Esq.}