Gerard Vs. La Coste

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Court : US Supreme Court

Decided On : 1787

Appeal No. : 1 U.S. 194

Appellant : Gerard

Respondent : La Coste

Judgement :

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U.S. Supreme Court GERARD v. LA COSTE, 1 U.S. 194 (1787)

1 U.S. 194 (Dall.)

Gerard
v.
La Coste et al.

Court of Common Pleas of Philadelphia County

June Term, 1787

This case came before the Court on a special verdict, and, after argument, the following judgment was pronounced by the President.

Shippen, President.

This action is brought against the acceptors of an inland Bill of Exchange, made payable to Bass and Soyer and indorsed by them, after the Acceptance, to the Plaintiff for a valuable consideration. The Bill is payable to Bass and Soyer, without the usual words 'or order' 'or assigns', or any other words of negotiability. The question is, whether this is a Bill of Exchange, which, by the law merchant, is indorsable over, so as to enable the indorsee to maintain an action on it against the acceptors, in his own name.

The Court has taken some time to consider the case, not so much from their own doubts, as because it is said eminent Lawyers, as well as Judges, in America, have entertained different opinions concerning it. There is certainly no precise form of words necessary to constitute a Bill of Exchange, yet from the earliest time to the present, merchants have agreed upon nearly the same form, which contains few or no superfluous words, terms of negotiability usually appearing to make a part of it. It is indeed generally for the benefit of trade that Bills of Exchange, especially foreign ones, should be assignable; but when they are so, it must appear to be a part of the contract, and the power to assign must be contained in the Bill itself.

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The drawer is the lawgiver, and directs the payment as he pleases; the receiver knows the terms, acquiesces in them, and must conform. There have doubtless been many draughts made payable to the party himself, without more, generally perhaps to prevent their negotiability: Whether these draughts can properly be called Bills of Exchange, even between the parties themselves, seems to have been left in some doubt by the modern Judges. Certainly there are draughts, in the nature of Bills of Exchange, which are not strictly such, as those issuing out of a contingent fund; these, (say the Judges in 2 Black. Rep. 1140.) do not operate as Bills of Exchange, but, when accepted, are binding between the parties. The question, however, here, is not whether this would be a good Bill of Exchange between the drawer, payee, and acceptor, but whether it is indorsable. Marius's

Advice is an old book of good authority; in page 141 he mentions expresly such a Bill of Exchange as the present, and the effect of it, and he says, that the Bill not being payable to a man or his Assigns, or Order, an assignment of it will not avail, but the money must be paid to the man himself. In 1 Salkeld 125, it is said, that it is by force of the words, 'or order' in the Bill itself, that authority is given to the party to assign it by indorsement. In 3 Salk. 67 it is ruled, that where a Bill is drawn payable to a man, 'or order,' it is within the custom of merchants; and such a Bill may be negotiated and assigned by custom and the Contract of the Parties. And in 1 Salk. 133 it is expressly said by the Court, that the words 'or to his order,' give the authority to assign the Bill by indorsement, and that without those words the Drawer was not answerable to the indorsee, although the Indorser might. An argument of some plausibility is drawn in favor of the Plaintiff from the fimilarity of Promissory Notes to Bills of Exchange. The statute of 3 & 4 of Ann appears to have two objects; one to enable the person to whom the Note is made payable, to sue the drawer upon the Note as an instrument (which he could not do before that Act) and the other to enable the Indorsee to maintain an action in his own name against the drawer. The words in this Act which describe the Note on which an action will lie for the Payee, are said to be the same as those on which the action will lie for the indorsee, namely, that it shall be a Note payable to any person, or his Order; and it appearing by adjudged cases, that an action will lie for the Payee although the words 'or order' are not in the note, it follows (it is contended) that an action will also lie for the Indorsee, without those words. If the Letter of the Act was strictly adhered to, certainly neither the Payee, nor Indorsee, could support an action on a Note, which did not contain such words of negotiability as are mentioned in the Act; yet the construction of the Judges has been, that the original payee may support an action on a Note not made assignable in terms. The foundation of this construction does not fully appear in the cases, but it was probably thought consonant to the Spirit

of the Act, as the words 'or order' could have no effect, and might be supposed immaterial, in a suit brought by the payee himself against the maker of the Note.

But to extend this construction to the case of an Indorsement, without any authority to make it appearing on the face of the Note, would have been to violate not only the Letter but the Spirit of the Act. Consequently no such case any where appears. On the contrary, wherever the Judges speak of the effect of an indorsement, they always suppose the Note itself to have been originally made indorsable. The case of Moore versus Manning in Com. Rep. 311. was the case of a Promissory Note originally payable to one and his Order; it was assigned without the words 'or order' in the indorsment; the question was, whether the assignee could assign it again: The Chief Justice, at first, inclined that he could not, but it was afterwards resolved by the whole Court, that if the Bill was originally assignable, 'as it will be (say the Court) if it be payable to one and his Order,' then to whomsoever it is assigned, he has all the interest in the Bill, and may assign it as he pleases. Here the whole stress of the determination is laid upon what were the original terms of the Bill, if it was made payable to one and his Order, it was assignable, even by an indorsee without the word 'order' in the indorsment; it follows, therefore, that if the Bill was not originally payable to order, it was not assignable at all. The same point is determined, for the same reasons, in the case of Edie & Laird v. the East India Company, in 1 Black. R. 29, where Lord Mansfield says, 'the main foundation is to consider what the Bill was in its origin; if in its original creation it was a negotiable draught, it carries the power to assign it.' In a similar case, cited in Buller's nisi prius 390, the Court held, that as the Note was in its original creation indorsable, it would be so in the hands of the indorsee, though not so expressed in the indorsment.

These cases leave no room to doubt what have been the sentiments of the Courts in England upon the subject. To make Bills, or Notes, assignable, the power to assign them must appear in the instruments themselves; and then, the custom of merchants, in the case of Bills of Exchange, and the Act of Parliament, in the case of Notes, operating upon the Contract of the Parties, will make them assignable.

In the case before us, no such contract appears in the Bill. The acceptance was an engagement to pay according to the terms of the Bill to Bass & Soyer; a subsequent indorsment, not authorized by the Bill, cannot vary or enlarge that

engagement, so as to subject the acceptor, by the law merchant, to an action at the suit of the indorsee.

Judgment for the Defendant.